



2. The plaintiff Brotherhood of Locomotive Engineers (“BLE”) is the exclusive collective bargaining representative under the Railway Labor Act (45 U.S.C. § 151 et seq.) for employees of all of the nation’s major rail carriers in the craft or class of locomotive engineers. It sues on its own behalf and on behalf of its members.

3. Defendant Norman Mineta is the Secretary of the United States Department of Transportation. He is the individual responsible for the taking of various actions under, and the promulgation of various regulations required by, the Safety Act and the Locomotive Act.

4. Defendant Allan Rutter is the Administrator of the Federal Railroad Administration (“FRA”). Defendant Mineta has delegated to defendant Rutter the taking of various actions under, and the promulgation of various regulations required by, the Safety Act and the Locomotive Act.

5. Pursuant to Section 202 of the Safety Act, 49 U.S.C. § 20103, defendant Mineta is required to “prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970.”

6. Section 20701 of the Locomotive Act, 49 U.S.C. § 20701, is entitled “Requirements for Use” and provides as follows:

A railroad carrier may use or allow to be used a locomotive or tender on its railroad line only when the locomotive or tender and its parts and appurtenances –

- (1) are in proper condition and safe to operate without unnecessary danger of personal injury;
- (2) have been inspected as required under this chapter and regulations prescribed by the Secretary of Transportation under this chapter; and
- (3) can withstand every test prescribed by the Secretary under this

chapter.

7. Section 20702 of the Locomotive Act, 49 U.S.C. § 20702, is entitled “Inspections, repairs, and inspection and repair reports”. Subsection (a) “General” provides as follows:

The Secretary of Transportation shall –

- (1) become familiar, so far as practicable, with the condition of every locomotive and tender and its parts and appurtenances;
- (2) inspect every locomotive and tender and its parts and appurtenances as necessary to carry out this chapter, but not necessarily at stated times or at regular intervals; and
- (3) ensure that every railroad carrier makes inspections of

locomotives and tenders and their parts and appurtenances as required by regulations prescribed by the Secretary and repairs every defect that is disclosed by an inspection before a defective locomotive, tender, part, or appurtenance is used again.

8. On or about January 15, 2002, six of the nation’s largest rail carriers (Burlington Northern and Santa Fe Railroad Company, CSX Transportation, Inc., Norfolk Southern Railway Company, Union Pacific Railroad Company, Consolidated Rail Corporation, and Kansas City Southern Railway Company), each of which is part of the general railroad system of transportation, began to operate locomotives in their terminal operations by means of microprocessors installed into locomotives and remote control devices handled by ground employees. As part of the implementation of these operational changes, these carriers eliminated positions held by locomotive engineers and now operate these locomotives without any employee at the controls inside the locomotive cabs.

9. Said carriers have announced that the microprocessors they have installed into locomotives which they are operating by using remote control devices have replaced the functions previously performed by locomotive engineers.

10. Pursuant to Section 202(i) of the Safety Act, 49 U.S.C. § 20101 and Section 1(e) of Public Law 103-272, 49 U.S.C. § 20135, and the delegation of responsibility and authority by defendant Mineta to defendant Rutter, the FRA has prescribed regulations and issued orders requiring the certification of locomotive engineers. The standards the FRA has prescribed are set forth at 49 CFR Part 240.

11. Locomotive engineers, including those whose functions the carriers say have been replaced by microprocessors, are required to be trained and certified in accordance with those standards. The failure of a locomotive engineer to adhere to such standards can result in his/her decertification and disqualification from service as a locomotive engineer.

12. Defendants are fully aware of the actions of the six carriers initiating operations of locomotives via microprocessors and remote control devices without locomotive engineers in the locomotive cabs, which microprocessors the carriers say have replaced the functions previously performed by locomotive engineers. Such operations are being conducted within the regulatory jurisdiction of defendants.

13. The microprocessors and remote control devices utilized by the six carriers are “parts and appurtenances” within the meaning of the Locomotive Act.

14. At no time have the defendants inspected these microprocessors and remote control devices.

15. At no time have the defendants prescribed regulations ensuring that these carriers make inspections of these microprocessors and remote control devices and repair every defect that is disclosed by an inspection before a defective microprocessor and/or remote control device is used again.

16. At no time have the defendants prescribed tests applicable to these microprocessors and remote control devices so that a determination can be made pursuant to Section 20701 of the Locomotive Act that these microprocessors and remote control devices “can withstand every test prescribed by the Secretary.”

17. By the aforementioned failures to act, defendants have violated their mandatory obligations under the Safety Act and the Locomotive Act.

18. Defendants’ failures to undertake the inspections, prescribe the tests, and promulgate the regulations required by the Locomotive Act have resulted in a situation where the six carriers are operating locomotives in violation of Section 20701 of the Locomotive Act.

19. Defendants’ failures to undertake the inspections, prescribe the tests, and promulgate the regulations required by the Safety Act and the Locomotive Act have resulted in an increased risk of danger to the members of the plaintiff, other railroad workers, and the public at large.

20. The harm caused by defendants’ failures to act can only be remedied by the intervention of, and issuance of an injunction by, this Court.

WHEREFORE, plaintiff requests that this Court

1. Declare the inaction of the defendants to be in violation of their obligations under the Safety Act and the Locomotive Act; and

2. Grant the plaintiff a permanent injunction requiring the defendants to comply with their statutory obligations under Section 20702 of the Locomotive Act to undertake inspections, prescribe tests and promulgate regulations applicable to the installation, use and inspection of locomotive parts and appurtenances that enable the operation of locomotives via remote control so as to ensure that every railroad carrier is in compliance with its obligations under Section

20701 of the Locomotive Act; and

3. Award plaintiff reasonable attorney's fees and costs incurred in bringing this action;  
and

4. Grant such other and further relief as the Court may deem warranted in the  
circumstances.

Respectfully submitted,

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