



U.S. Department  
of Transportation

**Federal Railroad  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

JAN 16 2009

Mr. Michael Ward  
Chairman, President and Chief Executive  
CSX Transportation  
500 Water Street J120  
Jacksonville, FL 32202

Dear Mr. Ward:

This letter is in regard to the Federal Railroad Administration's (FRA) CSX Transportation (CSXT) Harassment and Intimidation Investigation Report dated March 2008 (the Investigation Report). Specifically, I am concerned that CSXT has not made sufficient progress to remediate its culture of harassment and intimidation in connection with injury reporting.

As discussed in the Investigation Report, in August 2006, FRA received allegations that CSXT officers were trying to distort injury reporting data by discouraging injured CSXT employees from reporting on-duty injuries or from receiving proper medical treatment, and by retaliating against employees who reported injuries.<sup>1</sup> As a result of these allegations, FRA initiated an extensive yearlong investigation of CSXT involving more than 70 formal complaints. This investigation revealed that certain CSXT officers had created a culture of harassment and intimidation that dissuaded CSXT employees from reporting their injuries and illnesses.

As part of this investigation, FRA conducted a comprehensive audit of CSXT's accident/incident recordkeeping and reporting program. This audit revealed a number of regulatory violations, including the failure to report employee injuries. With respect to the issues of harassment and intimidation, specifically, FRA found that, in general, CSXT was not acting in compliance with the Internal Control Plan Policy Statement and Complaint Procedure as required by Title 49 Code of Federal Regulations Sections 225.33(a)(1) and (a)(2). The audit indicated that CSXT's complaint procedure was rendered largely ineffective by CSXT's failure to expeditiously address harassment and intimidation complaints. FRA also determined that CSXT did not act in compliance with its Internal Control Plan requirement relating to the completion of personal injury reports by CSXT employees.

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<sup>1</sup> This was not the first time allegations of harassment and intimidation have been made against CSX. For example, in 2003, FRA received approximately 35 such complaints, triggering an investigation at that time.

In addition, FRA interviews conducted in 2007 with CSXT employees revealed, as reported by both CSXT officers and employees, a systemwide practice in which CSXT officers discussed FRA accident/incident reportability with injured employees en route to the treatment facilities or even at the treatment facilities. Similarly, CSXT officers informed injured employees that reportable injuries would be a mark on their personal records and may have an adverse impact on their careers. In addition, CSXT officers transported injured employees to CSXT offices following medical treatment for "fact-finding interviews" in an apparent attempt to deter the reporting of future injuries (where, in many cases, the injured employee was interviewed by multiple carrier officers). Furthermore, CSXT officers informed employees that if their injury was reportable to FRA, CSXT would likely require the employee to submit to an alcohol and/or drug test (but if not reported, no such test would be necessary). CSXT officers also instructed injured employees to select "sick" or "suspended" designations where such employees requested to be "marked-off" from performing services, improperly recording the employees' lost days.

In letters dated October 4 and November 12, 2007, CSXT made numerous representations regarding its response to the compliance deficiencies raised in the Investigation Report. For instance, CSXT represented that it would broaden manager training to include training on the proper handling of on-duty injuries, including: discussing CSXT's policy not to discuss FRA reportability criteria with an injured employee or with treating hospital personnel; discussing CSXT's policy that officers should not enter treatment rooms unless invited by the employee; discussing CSXT's policy that officers should not try to change doctors' treatment recommendations; and discussing CSXT's policy that officers should not discuss discipline or rules violations when arranging treatment for an injured employee. CSXT also represented that it had adopted enhanced guidelines for conducting injury reporting intimidation/harassment investigations and determining corrective action (i.e., a 30-60-day timeframe, an additional 30 days to assess discipline, and notification to the complainant regarding termination). CSXT further represented that it had made numerous managerial changes, and that it would modify its Internal Control Plan Policy Statement. In addition, CSXT represented that it had taken a number of disciplinary actions against certain carrier officers, including coaching, counseling, demotion, withholding of bonuses, and termination. CSXT also represented that it would ensure completion of the PI-1A form (CSXT's initial employee injury report form) and that it had included information on the proper handling of on-duty injuries in its operating rules. Moreover, CSXT represented that it would provide ongoing leadership training to provide managers with communication skills and coaching styles. CSXT also represented that it had implemented an employee wellness program to reinforce the health and safety of its employees.

In spite of these representations, FRA continues to receive complaints of harassment and intimidation against CSXT. In June 2008, for example, FRA received new allegations of harassment and intimidation of CSXT employees who had reported on-duty injuries on the CSXT Florence Division. In response to these allegations, FRA conducted both listening sessions and interviews with injured employees.<sup>2</sup> Similar to the above-referenced 2007

<sup>2</sup> It should be noted that CSX issued a letter on October 30, 2008, in response to several specific requests for information posed by the FRA.

interviews, the 2008 investigation revealed a divisionwide practice in which CSXT field officers were requesting to enter and/or entering the treatment rooms of injured employees. In addition, following treatment, CSXT managers often transported injured employees to a CSXT office to conduct fact-finding interviews, which included three or more carrier officers in the room with the injured employee. FRA found that in numerous cases, injured employees were transported from the hospital emergency room by carrier officers to the CSXT yard office, interviewed by several officers, and then were required to complete documents even though they had exceeded the statutory on-duty time. Without addressing the findings in further detail, the investigation shed light on continuing widespread harassment and intimidation at CSXT.<sup>3</sup>

It is clear that CSXT has failed to adequately address its culture of harassment and intimidation. FRA has notified and discussed these deficiencies in detail with CSXT. However, the complaints received, investigated, and substantiated in 2008 demonstrate that CSXT has not yet fulfilled its commitments made to FRA regarding harassment and intimidation. The problems previously addressed have not yet been corrected. I, therefore, request that CSXT submit to FRA a letter by January 30, 2009, detailing the measures CSXT has taken to address these issues; which of these measures you have found to be effective; and what additional steps you plan to pursue.

I understand that you "share the FRA's commitment to identifying and correcting any harassment and intimidation in connection with injury reporting and to preventing any future occurrences," as CSXT stated in its November 17, 2007, letter; and that CSXT believes "one instance of intimidation is too many." However, the evidence shows that CSXT's response has been inadequate. In order to truly prevent any more instances of intimidation, CSXT must put forth a sustained good-faith effort to change its culture.

I look forward to hearing from you.

Sincerely,

Clifford C. Eby  
Acting Administrator

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<sup>3</sup> Moreover, during the course of FRA's investigation, FRA was made aware of additional cases of alleged harassment and intimidation requiring more interviews.