

## News - Local News

**Crewmen complain, Union Pacific fined***by George Lauby (North Platte Bulletin) - 2/20/2017*

Union Pacific Railroad was fined \$20,000 on Feb. 15 in favor of an engineer and conductor who said their locomotive seats were too wobbly to safely operate the train.

The Occupational Safety and Health Administration of the U.S. Department of Labor handed down the decision, that Union Pacific Railroad violated the Federal Railroad Safety Act.

The finding stems from a workplace dispute between Director of Transportation Services Jeff Everetts and locomotive engineer Mike Fletcher and conductor Todd Krekovich.



*Photo by George Lauby*  
**Bailey's Yard's diesel shop and maintenance area.**

When Fletcher and Krekovich climbed aboard a train Nov. 20, 2015, they were headed to Cheyenne, Wyo.

Before they left, they said the engineer's and conductor's seats on the lead locomotive were not up to federal safety standards.

"There was 'horrific' side-to-side lateral movement when operating the locomotive around a curve at normal speed," the OSHA ruling said.

The men's attorney, Lou Jungbauer, said a young manager talked it over with the crewmen. The manager brought in a technician to measure the wobble. He talked to his superiors, and ordered the crew to take the train "as is."

The men declined.

Fletcher asked for the seats in the No. 2 locomotive or the entire No. 2 locomotive, to be moved to the No. 1 position. He was told no.

The men were pulled off the locomotive and ordered to the superintendent's office for further questioning.

When they got to the office, they declined to answer any questions until union representatives arrived. The representatives lived nearby and were on the way, the ruling said.

The men were soon escorted out of the office and told to go home, removed from service.

When the union reps arrived, they found Fletcher and Krekovich in the crew room clocking out. Fletcher used this time to state his concern on the company's safety hotline, the ruling said.

The employees then left the property, presuming they could be fired.

However, due to an administrative error, 24 hours later the department that schedules crews reinstated the two men on another locomotive.

According to OSHA's account of the evidence, management then agreed to let the men continue to work, and also, reimbursed the men for the lost trip.

Also, a day or two later, the locomotive was sent to the mechanical shop in Denver for "cab seats/rough rider" and both seats were replaced, the ruling said.

About four months later, the men filed a complaint with OSHA for Whistleblower Protection. They said they were mistreated.

When the men first contacted Jungbauer to see if he would handle their case, he told them their claim appeared to be valid, but since there was little or no wage loss, any recovery would be minimal.

According to Jungbauer, both workers responded, "It isn't about the money" and they wanted to fight back against on-the-job intimidation.

Jungbauer said there is considerable pressure to put profits above safety.

"Most of the (UP) managers are trying to do their best, but the pressure from Omaha can drive the most reasonable of managers to the edge," he said.

In response to OSHA complaint, Union Pacific said the men raised their concern in a "highly inappropriate" manner, and refused to answer questions in the superintendent's office.

However, "the employees followed the chain of command when reporting their concern, reporting it first to the Yardmaster, who then reported it to the Manager of Yard Operations," the ruling says. "When the MYO arrived, the employees showed him the seats and pointed out other concerns with the locomotive. The MYO called a technician, who determined that the seats were within specifications, which prompted the MYO to tell the employees to depart with the train."

"The employees, however, remained adamant that the seats did not comply with federal safety standards," the ruling said. "After consulting with upper management, the MYO ordered the employees off the locomotive and to the superintendent's office."

The OSHA ruling says evidence shows the MYO's conduct – not the employees' – became unprofessional, even unsafe.

"The MYO drove at excessive speeds, in violation of the posted speed limit, and, at one point, almost collided with another vehicle (on the way to the superintendent's office,)" the ruling says.

The two men had a right to wait for union representatives, the ruling said.

The men were "justified in believing that management was in the beginning stages of the formal disciplinary process, and that anything stated from that point on could be used... at a formal disciplinary hearing."

UP management claimed the purpose of the meeting in the superintendent's office was simply to collect additional information about the safety concern. However, there is evidence suggesting that the employees had already been pulled out of service, the ruling said.

"The employees recalled the Director of Transportation Services becoming angry and said, "It doesn't work that way around here anymore."

Under the ruling, UP will pay each man \$10,000 in punitive damages as well as \$2,500 in compensatory damages, and the men's attorney's fees in the total amount of about \$18,000.

The compensatory damages were due because the men "reported feeling anxiety and embarrassment up until he was fully reinstated and told that formal discipline would not be pursued," the ruling said.

A UP spokeswoman did not return a request Monday for comment.

The company has 30 days to appeal the ruling.

If they don't, UP must post a "Notice to Employees" for 60 consecutive days in all areas where employee notices are customarily posted at the Bailey Yard terminal, the ruling said.

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