

**BRING BACK THE FIREMAN!  
AN ASSISTANT IN THE TRAIN CAB IS GOOD SAFETY PRACTICE**



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## **Bring Back the Fireman! An Assistant in the Train Cab is Good Safety Practice**

*“It’s Deja Vu all over again” — Yogi Berra*

My mother’s family included railroad men dating from the day the first Cahill came over from Ireland. My Uncle Ed, atop the seniority list for conductors at New Haven, and once a crew dispatcher himself, asked me if I would be interested in the spare board of the New Haven crew dispatcher’s office. Hours were relatively flexible, and it certainly fit the schedule of a full-time law student. Yale had no night school, so both the middle trick (4 p.m. to midnight) and the graveyard shift (12.01 a.m. until 8 a.m.) were possible.

So I hired out. And soon I found myself aboard the “jitney,” a unique train movement consisting of an RS-3 diesel and a demoted coach, for my first day as a caboose inspector. In this day of no more cabooses, it is hard to imagine a full-time employee whose job was to see that the way cars were filled with fuses, flags, lanterns and all sorts of safety equipment. It was out in lonely Cedar Hill yard east of the city, with ample time for a law student to digest torts, contracts and civil procedure. To get me to the inspector shack took an engineer and fireman (at this time we were still under the 1938 National Diesel Agreement), a conductor and two yard brakemen. The crew dispatcher's office had a car at its disposal, Connecticut Company buses were available, and even a taxi would have been far more economical than paying these five gentlemen their wages for a day. I sat looking around at the walkover seats in the deserted coach, and thought “Someday I am going to remember this weekly ride fondly.”

Caboose work was but one day of the week. The rest of the time was less of a sinecure. I worked as janitor in the trainmen’s room on weekends and as a crew caller on Mondays and Tuesdays. With the draft emptying the railroad of employees, it was fairly soon that I managed to bid into a permanent job that got me through the last two years of law school.

A half-century later, there are no more firemen (who never did tend a fire on a diesel or electric locomotive) and most trains operate with a crew of two. The fireman, required by the 1938 National Diesel Agreement, was eliminated through an unprecedented compulsory arbitration law enacted at the behest of the Kennedy administration. The complicated story has been told again and again [see Thoms, “The Vanishing Fireman,” 14 *Loyola Law Review* 125 (1971) and Thoms and Clapp, “Labor Protection in the Transportation Industry,” 46 *North Dakota Law Review* 379 (1988)]. The upshot is that rail strikes are so disastrous that the rail industry is unique in having its labor relations dictated by national compulsory arbitration. [See Dooley and Thoms, “Collective Bargaining Under the Railway Labor Act,” 20 *Transportation Law Journal* 275 (1992)]. As a matter of fact, since the fireman dispute of 1963, Congress has intervened 12 times to protect union members’ jobs and provide for greater safety for railroad workers and their passengers. (See, generally, F. Dooley and W. Thoms, *Railroad Law a Decade After Deregulation*, (1994), Chapter 8, pp. 110-111).

There are no more firemen, nor are there cabooses either. (There are a few exceptions with short line switching operations such as the Northern Lines Railway in St. Cloud,

MN, which still uses cabooses for the conductors to watch the track behind the train). But on most trains, such as freight trains, the conductor rides up in front with the engineer, providing an extra pair of eyes in the cab. But on Amtrak, the engineer rides alone.

Throughout the last half of the 20th Century, ICC rulings or Congressional action managed to keep many superfluous (in management's eyes) jobs alive. When a railroad is abandoned or merged, many jobs are lost and the loss often falls on rural communities, where alternative jobs are few and far between. Many labor-watchers have wondered why one group of union workers find labor protection while the rest of us have to depend upon severance pay to keep us in wine, cheese and cat food. [See generally, Thoms, "What Price Labor Protection?" *Trains Magazine*, June 1982, pp. 47-49].

The largest labor protection to date was the Rail Passenger Service Act of 1970, which directed the railroads, which were discontinuing their own passenger trains in favor of Amtrak, to provide labor protection to their furloughed passenger trainmen. The railroads and unions were unable to agree, and thus the Secretary of Labor provided labor protection provisions which were incorporated in any contract between Amtrak, the unions, and the participating railroads. Similar provisions were incorporated in the Regional Rail Reorganization Act, which created Conrail from the ruins of the bankrupt eastern railroads. Since Conrail could not afford to pay its own help, much less its furloughed brethren, the Staggers Act of 1980 appropriated an additional \$235 million but made it clear that this would be it. More labor protection was incurred with the liquidation of the Rock Island and Milwaukee Railroads in 1983. It is clear that what Congress has given, Congress may take away.

Now, in the 21st century, Amtrak is running trains with a lone wolf in the cab. Freight trains are running with two man crews and management is trying to cut that number in half. On May 12, 2015, engineer Brandon Bastion, negotiating a sharp curve in Philadelphia, managed to derail his Amtrak train, killing 8, injuring 200, and just avoiding a deadly crash with oil tank cars. Many, including this writer, suggest that Amtrak and commuter passenger authorities should err on the side of safety and place an assistant (you don't have to call him a fireman if you don't want to) on the other side of the cab.

Amtrak and the Federal Railroad Administration point out that the Northeast Corridor of Amtrak is due for the installation of Positive Train Control. PTC would automatically apply the emergency brake of any train operating way above the speed limit (Mr. Bastion was going 107 mph when he entered the curve, which had a 50 mph limit). All well and good, but until the system is in place nationwide, let's keep the oil trains and passengers separate and have a safety man or woman in place in case the engineer is incapacitated.

*Bill Thoms has been interested in transportation since his formative years as a crew caller for the now-defunct New York, New Haven & Hartford RR while attending law school. He has written and lectured extensively in the field of transportation law, with a particular interest in railroad issues.*