



Lorraine A. Green

Vice President, Human Resources and Diversity Initiatives

July 15, 2010

Edward W. Pritchard
Director, Office of Safety Assurance and Compliance
U.S. Dept. of Transportation
Federal Railroad Administration
1200 New Jersey Ave., S.E.
Washington, DC 20590

Re: Amtrak's Operation Redblock Program

Dear Mr. Pritchard:

I write in response to your June 10, 2010 letter, in which you requested certain documentation and information regarding Amtrak's Operation RedBlock program. Your requests grew out of the FRA's audit, in July 2009, of Amtrak's drug and alcohol prevention programs, and followed up on the April 2010 meeting between Amtrak and the FRA. Thank you for your continued patience and willingness to meet with us and engage in a dialogue about this important component of Amtrak's drug and alcohol prevention program. Amtrak is absolutely committed to the success of each component of its drug and alcohol prevention program, and welcomes review and input by the FRA.

Below, you will find our detailed responses to each individual request you have made. In short, we are providing with this letter all available documentation that is responsive to your requests. Where RedBlock does not maintain certain information or documentation, we have provided an explanation as to why the information is not available. All of the documentation and information that is being provided about Operation RedBlock has been obtained by Amtrak from Operation RedBlock's Director and/or Labor Coordinator. Information about EAP referrals has been provided by EAP.

In addition, in order to provide some additional background for these responses, we are also enclosing two binders, one describing Amtrak's Operation RedBlock program and another describing RedBlock's Union Member Assistance Coordinator Program.¹ We hope that these assist you in understanding how these programs have been designed to operate, including their missions and how they strive to achieve those missions.

¹ Please note that we consider these binders to be confidential and proprietary. In addition, all pages we are producing that contain data on participation in these programs are stamped "Confidential." We ask that you please respect these designations and not disclose this material to third parties or anyone who does not have a need to review it.



Response to FRA Requests

Your June 10, 2010 letter contains both a request for a number of types of documentation and also recommendations regarding how it believes the RedBlock program should operate going forward, including what documentation it expects the program to maintain, in order to meet the requirements of 49 C.F.R. §219.105(b) (which requires Amtrak to exercise "due diligence" to ensure that covered employees comply with the drug and alcohol prohibitions of 219.101 and 102). Below, we respond in turn to each of these sections.

(1) Response to Request for Documentation

- *Documentation indicating how many covered employees marked off under RedBlock from 2007-present.* This documentation is available and is being provided with this letter. Specifically, four spreadsheets are enclosed, one for each year from 2007 to the present (with 2010 data through June 30), listing each date a covered employee marked off, as well as his or her craft and job title. In order to maintain the confidentiality of the employees, each employee name has been replaced with a number. *This documentation should also indicate how many of these covered employees were:*
 - *Locomotive engineers certified under 49 C.F.R. Part 240;* This documentation is available and is being provided with this letter. Specifically, four spreadsheets are enclosed, one for each year from 2007 to the present (with 2010 data through June 30), listing each date a locomotive engineer marked off. Again, for confidentiality reasons, each employee name has been replaced with a number.
 - *First-time users of RedBlock, second-time users of RedBlock, etc.;* This documentation is available and is being provided with this letter. Specifically, four spreadsheets are enclosed, one for each year from 2007 to the present (with 2010 data through June 30). Each spreadsheet groups together under one header the numbers that represent the same employee. If two numbers are listed together, that means the person identified by those numbers marked off twice that year. Similarly, if three numbers are listed together, that means the person identified by those numbers marked off three times that year. In only one case since 2007 did a covered employee mark off four times in one year, as indicated on the 2008 spreadsheet.



- *Identified as having an active substance abuse problem;* As discussed in greater detail below, RedBlock does not presently collect this data because it does not "identify" employees as having an active substance abuse problem. Thus, Amtrak has no such documentation. RedBlock's mission is not to diagnose or treat but, rather, to encourage affected employees to seek evaluation and treatment from qualified professionals.
- *Referred to Amtrak's internal EAP;* All employees who mark-off are given EAP contacts as a referral source. RedBlock does not track or document which employees actually utilize that resource. To the extent this request relates to Amtrak's statement in its January 25, 2010 correspondence regarding referrals via Rule G Bypass Agreements, no such referrals were made during this period.²
- *Referred to non-Amtrak EAP providers. Please provide the contact information and certification documentation for these EAP providers.* All employees are given contact information regarding EAP and their medical/mental health benefit plan. RedBlock does not refer employees to non-Amtrak EAP providers. Again, RedBlock does not track or document which employees make use of which resources.
- *Documentation indicating how Amtrak's RedBlock program determined whether covered employees using the program did or did not have an active substance abuse problem. For example, did a RedBlock captain call the employee or schedule a face-to-face meeting with him or her? How was this initial evaluation conducted?* RedBlock does not require or ask a Captain or a peer counselor to make an evaluation as to whether or not an employee has an active substance abuse disorder, nor would they be qualified to do this. Thus, Amtrak has no such documentation. Under the parameters of the program, a RedBlock volunteer's responsibility is to have the impaired co-worker agree to remove him or herself from the property safely. Referral sources are provided to each employee who uses the mark-off procedure.

² In addition, Amtrak would like to clarify its statement in that correspondence that "an employee with an active substance abuse disorder who refuses to cooperate with ORB's efforts to facilitate treatment will be referred to EAP via a Rule G Bypass Agreement." This is incorrect, and we sincerely regret the error. RedBlock cannot, under current rules, refer an employee to EAP against his or her will based on failure to cooperate in obtaining treatment. However, an employee can be referred to EAP with a Rule G Bypass Agreement in a case where the employee is suspected of being impaired but refuses to mark off. Pursuant to such agreements, the employee is removed from service but can avoid being charged if he or she contacts EAP within 5 days and fully cooperates with EAP's recommended treatment. EAP monitors the employee's compliance and reports on such to the employee's management. The employee is returned to service only after EAP approves the return, and the employee may be subject to continuing review and testing thereafter as deemed appropriate by the EAP counselor.



- *If Amtrak's RedBlock program identified a covered employee as possibly having an active substance abuse problem, what substance abuse professional (or entity) made that determination? Additionally, what educational or clinical program was utilized to treat the employee? To whom was this specific employee referred? If the covered employee was not sent to Amtrak's internal EAP, why not? Please provide all contemporaneous documentation directly related to each specific individual concerned.* Again, RedBlock does not clinically assess an employee to determine if an employee has an active substance abuse disorder. However, if conditions warrant more attention, RedBlock does take certain measures to monitor the employee and encourage the employee to seek assistance. Specifically, RedBlock will co-opt the employee's peers and enlist union pressure to watch the employee for signs of impairment, to ensure that the employee marks-off if he or she is impaired and on the property, to conduct an intervention if appropriate, and to encourage the employee to seek professional assistance. If the marked-off employees seek assistance from EAP, EAP will conduct an evaluation. If they seek assistance through their health benefits, their provider would conduct an evaluation as part of the treatment. RedBlock (other than through its Union Member Assistance Coordinator Program as discussed below) does not maintain documentation regarding any employee's treatment nor does it maintain documentation regarding the specifics of its communications and/or interventions with any individual employee.
- *If Amtrak's RedBlock program referred a covered employee to a non-Amtrak EAP, please provide documentation indicating that the EAP used was aware of and complied with FRA regulations regarding the use of alcohol and drugs by covered employees (e.g., §§ 219.101, 219.102, 219.103, 219.105, and 240.119(e)). Please provide all contemporaneous documentation related to each specific individual concerned.* As stated above, RedBlock does not refer employees to non-Amtrak EAPs.
- *Amtrak's Designated Employer Representative ("DER") has indicated that Amtrak's RedBlock program referred eight (8) covered employees to the Amtrak EAP for assistance from 2007-present. Please provide the case management files for these eight (8) employees so that FRA can determine whether they were properly evaluated and treated.* As an initial matter, we have confirmed with the EAP that according to their records, only two covered employees (conductors) were referred for substance abuse related issues by RedBlock (including RedBlock "peer counselors") to EAP from 2007 to the present. It appears that as of the audit date in 2009, eight employees overall (covered and non-covered) were so referred. EAP's case management files for these two employees can be made available on a confidential basis (without employee names) to the FRA for on-premises review. RedBlock, on the other hand (other than through its Union Member Assistance Coordinator Program as discussed below), does not maintain any files on an employee that would relate to the employee's referral, evaluation or treatment.



Summary

In response to the above requests, we have generally stated that RedBlock does not clinically assess, treat or maintain records on employees who use its mark off procedures. That does not mean, of course, that RedBlock does not provide any support for or monitoring of these employees. As described in the enclosed booklet, each mark off is followed by at least one telephone call to the affected employee by a RedBlock [Captain] team member, peer counselor, union representative or a RedBlock staff member depending on the level of intervention required, who provides several referral options. If an employee has multiple markoffs or other indicators of a more serious problem, a more tailored approach will be taken. As stated above, union leadership is often recruited to assist in encouraging the employee to seek treatment, interventions may be held, and trained peers watch over the employee on a regular basis for signs of impairment. In all cases, employees who mark off are provided numerous channels for referrals to qualified treatment professionals. The lack of documentation regarding these activities with respect to particular employees is part of the program's overall commitment to confidentiality, which is critical for ensuring full and meaningful participation.

(2) Additional Information Regarding RedBlock's Union Member Assistance Coordinator Program

In addition, to help you understand the complement of support services provided by RedBlock, we have enclosed a binder on the RedBlock Union Member Assistance Coordinator (UMAC) Program. This is a voluntary program within RedBlock staffed by a certified substance abuse coordinator (CAC) who is also a union member. The mission of the program is to support relapse prevention for employees who have completed treatment for drug or alcohol conditions. When employees enroll in the UMAC Program, they sign a one-year treatment contract stating, among other things, that they will maintain regular contact with the UMAC Coordinator and will remain abstinent from all mood changing substances for that period. Employees work with the coordinator to develop a customized list of relapse warning signs or triggers, and a relapse prevention plan. The UMAC Program is a supplement to, not a replacement for, other treatment and prevention programs, such as AA, NA, EAP, and other outside substance abuse treatment programs.

Data on employees (both covered and non-covered) who have voluntarily enrolled in the UMAC Program is included in the UMAC binder at tabs 3 and 4 (current roster as of 12/2008, and historical data, respectively).³ The files maintained by UMAC on covered employees who were in this program during the relevant period will be made available for your on-premises review on a strictly confidential basis, after all identifying information has been removed.

³ The chart containing historical data, i.e., data on closed cases, has not been regularly updated since this chart was prepared, partially due to the retirement of one of the UMAC's in June 2008. The chart containing the UMAC's current roster is regularly updated, and an updated chart (as of July 1, 2010), is being provided separately with this letter.



(3) Response to Request for RedBlock Procedural Changes, Including Maintenance of Records

In addition to the above requests for documentation, you have also requested that Amtrak's Operation RedBlock program begin to maintain certain other categories of documentation, and make those documents available to the FRA going forward. Several of these categories of documents are already maintained, and will be made available to the FRA upon request.⁴

With respect to your recommendations for more substantive changes to be made to the RedBlock program (including those we have inferred from some of your documentation requests), Amtrak welcomes the opportunity to continue to discuss these issues.

As we understand it, the primary issue that concerns the FRA is whether covered employees, and in particular locomotive engineers, who have active substance abuse disorders might be continuing to work without being diagnosed and treated. Your recommendation is that RedBlock conduct some sort of assessment of covered employees who mark off, and require that any employee with an active substance abuse disorder be referred to EAP (which, in turn, is subject to federal regulations requiring it to waive confidentiality of a covered employee who does not comply with treatment). This would be a significant departure from the current practices of and philosophy behind RedBlock. As the enclosed documentation explains, RedBlock relies on peers, or lay volunteers, to intervene with employees and encourage them to seek assistance. RedBlock does not evaluate or diagnose an employee with a substance abuse disorder, and does not mandate that an employee obtain counseling or treatment. In fact, the lynchpin of the program, and what encourages employees to use the mark-off procedure, is that the process is confidential and does not have any "consequences."⁵

⁴ For example, RedBlock maintains documents explaining its purpose and goals (including the binder being provided with this letter), data on how many covered employees use RedBlock's mark-off procedures and documentation on RedBlock's training and education programs.

⁵ Amtrak is committed to being fully transparent to and as forthcoming as possible with the FRA about RedBlock, and is fully open to discussing the program going forward, but we note for the record that the legal bases you state for your recommendations are not entirely clear or without question. Because RedBlock does not identify any participants as having an active substance abuse disorder, we question whether there is a corresponding obligation on the part of Amtrak to follow the regulatory provisions regarding treatment and de-certification for covered employees with an identified active substance abuse disorder. In particular, knowledge by the RedBlock volunteers or administrators that an employee has marked off does not establish actual knowledge on the part of the corporation either that the employee has violated section 101 or 102, or that the employee has an active substance abuse disorder. Further, the question as to what constitutes appropriate "due diligence" under the regulations does not have a clear answer, and we continue to believe that Amtrak's current drug and alcohol prevention program, with all of its constituent parts, does satisfy the regulatory due diligence standard.

Mr. Edward W. Pritchard
July 15, 2010
Page 7



Notwithstanding these concerns, to the extent that the FRA believes the program should be changed to provide for assessments and referrals to Amtrak's regulated EAP program, at least in some cases, we certainly understand the safety rationale behind that recommendation. We also believe that in light of the critical safety considerations at issue, and in light of the considerable success the program has had to date, any changes to the program must not be undertaken lightly, without internal discussion and collaboration with affected departments and the unions. Union discussions are particularly critical in light of the fact that this program is based on mutual agreement between the labor organizations and management. Amtrak strongly supports Operation RedBlock, having believed that it promotes Amtrak's highest value and priority, which is safety. We agree that it is important to closely examine the RedBlock operation and determine if that is indeed the case or if there are changes we could and should make in order to strengthen it further. As you know, Amtrak's Inspector General has an open audit of the RedBlock program. The results of the IG's final report, as well as your recommendations will be carefully reviewed and discussed among all relevant stakeholders. Indeed, some of these discussions have already begun to take place.

After you have had a chance to review this letter and the enclosed documentation, please feel free to contact me for further discussions about next steps on these issues.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lorraine A. Green".

Lorraine A. Green
Vice President
Human Resources and Diversity Initiatives

Enclosures



U.S. Department
of Transportation

**Federal Railroad
Administration**

RECEIVED
JUN 15 2010

BY:-----

1200 New Jersey Avenue, SE
Washington, DC 20590

JUN 10 2010

Ms. Lorraine A. Green
Vice President, Human Resources
National Railroad Passenger Corporation
60 Massachusetts Avenue NE
Washington, DC 20002

Dear Ms. Green:

This letter is a followup to the April 16, 2010, meeting between personnel of the Federal Railroad Administration (FRA) and the National Railroad Passenger Corporation (Amtrak). At the meeting, FRA's audit recommendation regarding Amtrak's self-policing peer review program, Operation:RedBlock (RedBlock) was discussed with Amtrak's Mr. Bobby Bonds and Ms. Keren Rabin. The meeting was also attended by Mr. Lamar Allen, FRA's Alcohol and Drug Program Manager, and Ms. Elizabeth Gross of FRA's Office of Chief Counsel. This letter clarifies FRA's position and specifies the information and documentation FRA requires in order to adequately ensure that RedBlock is in compliance with Federal alcohol and drug regulations.

Background

FRA conducted an audit of Amtrak's alcohol and drug program on July 21-23, 2009. During the audit, FRA reviewed Amtrak's voluntary referral policy and coworker report policy. Amtrak is required to develop and implement these policies under Title 49 Code of Federal Regulations (CFR) Part 219, Subpart E, Identification of Troubled Employees. The audit also reviewed RedBlock.

FRA subsequently provided Amtrak with a report that contained the audit findings and made certain recommendations. The report noted that during 2008 (the only full year of RedBlock data provided), 74 covered employees marked off under RedBlock instead of reporting for duty. Data provided for portions of 2007, 2008, and 2009 also indicated that at least 18 locomotive engineers had marked off under RedBlock. Under 49 CFR Section 240.119(b), a person who has an active substance abuse disorder may not be certified as a locomotive engineer. No information was provided during the audit regarding whether the locomotive engineers who marked off under RedBlock were evaluated or possibly treated for active substance abuse problems. As such, FRA recommended that Amtrak review all RedBlock cases involving locomotive engineers to ensure that any engineer diagnosed with an active substance abuse problem was handled in accordance with Federal regulations.

Amtrak's January 25, 2010, response to FRA's audit report correctly indicated that RedBlock was not a Federal program subject to 49 CFR § 240.119(e). The Federal program requires voluntary referral policies to waive confidentiality for locomotive engineers who have an active substance abuse disorder and who refuse to cooperate with an Employee Assistance Program (EAP) counselor's recommended course of counseling or treatment. However, Amtrak also noted that RedBlock has a similar provision under which an employee with a substance abuse problem, who refuses to cooperate with RedBlock's efforts to facilitate treatment, will be referred to EAP.

Amtrak also responded, to the extent that the criteria for EAP referrals under RedBlock were not entirely clear, that it would be appropriate for RedBlock to submit to EAP a written protocol setting out the circumstances under which it would refer a noncooperating employee, with an apparent drug or alcohol abuse problem, to EAP.

FRA indicated that it remains concerned that RedBlock has not provided documentation indicating that locomotive engineers (who mark off with a possible substance abuse problem) are receiving the appropriate diagnosis and treatment. This letter clarifies FRA's concerns and specifies the information FRA is requesting for review.

Amtrak's Responsibilities Under Federal Regulations

Title 49 CFR § 219.105(b) requires Amtrak to exercise "due diligence" to ensure that covered employees comply with the alcohol and drug prohibitions of 49 CFR §§ 219.101 and 219.102. Amtrak is also required to ensure that no certified locomotive engineer has an active substance abuse disorder as prohibited by 49 CFR § 240.119(b). As a matter of due diligence, FRA expects Amtrak's RedBlock program to have procedures that (1) assess whether locomotive engineers who mark off under RedBlock have an active substance abuse problem, and (2) ensure that locomotive engineers identified with an active substance abuse problem receive the appropriate treatment and followup so that they can return to duty safely.

Amtrak has expressed concern that requiring covered employees who use RedBlock to submit to an EAP evaluation would undermine confidentiality and deter employees from using the program. FRA agrees that confidentiality is an essential component of RedBlock, and would like to assure Amtrak that it does not expect that every covered employee who marks off will be subject to an EAP evaluation. Rather, FRA wishes to verify that covered employees (particularly locomotive engineers) whom RedBlock, or a qualified substance abuse professional (SAP), identified as having a possible active substance abuse problem are receiving the appropriate diagnosis and treatment. FRA does not believe that this expectation raises a confidentiality issue, since Amtrak has already indicated that RedBlock waives confidentiality for employees identified as having an active substance abuse problem.

Documentation Requested

Upon request, FRA is authorized to have access to "any ... information pertaining to the railroad's alcohol and drug misuse prevention program." See 49 CFR § 219.905(c). As

such, FRA is requesting that Amtrak provide the following information and documentation concerning its RedBlock program:

- Documentation indicating how many covered employees marked off under RedBlock from 2007–present. This documentation should also indicate how many of these covered employees were:
 - Locomotive engineers certified under 49 CFR Part 240;
 - First-time users of RedBlock, second-time users of RedBlock, etc.;
 - Identified as having an active substance abuse problem;
 - Referred to Amtrak’s internal EAP; and
 - Referred to non-Amtrak EAP providers. Please provide the contact information and certification documentation for these EAP providers.
- Documentation indicating how Amtrak’s RedBlock program determined whether covered employees using the program did or did not have an active substance abuse problem. For example, did a RedBlock captain call the employee or schedule a face-to-face meeting with him or her? How was this initial evaluation conducted?
- If Amtrak’s RedBlock program identified a covered employee as possibly having an active substance abuse problem, what substance abuse professional (or entity) made that determination? Additionally, what educational or clinical program was utilized to treat the employee? To whom was this specific employee referred? If the covered employee was not sent to Amtrak’s internal EAP, why not? Please provide all contemporaneous documentation directly related to each specific individual concerned.
- If Amtrak’s RedBlock program referred a covered employee to a non-Amtrak EAP, please provide documentation indicating that the EAP used was aware of and complied with FRA regulations regarding the use of alcohol and drugs by covered employees (e.g., 49 CFR §§ 219.101, 219.102, 219.103, 219.105, and 240.119(e)). Please provide all contemporaneous documentation related to each specific individual concerned.
- Amtrak’s designated employer representative has indicated that Amtrak’s RedBlock program referred eight covered employees to the Amtrak EAP for assistance from 2007–present. Please provide the case management files for these eight employees so that FRA can determine whether they were properly evaluated and treated.

For future purposes, FRA will routinely require documentation and data to ensure that Amtrak’s RedBlock program (or other similar prevention programs) is complying with the railroad’s duty to exercise due diligence under 49 CFR § 219.105(b). In order for FRA to perform this oversight function, FRA will require Amtrak to maintain the following information and provide it upon request:

- Documentation explaining the purpose and goals of any alcohol and drug misuse prevention program, and how the program works to identify and assist covered employees with possible substance abuse problems.
- Data indicating how many covered employees use these programs.
- Data indicating how the program assists covered employees who are identified as having active substance abuse problems either through mark offs or other methodologies that are outside the programs required by Federal regulations.
- Documentation indicating how program personnel have been trained to identify and assess potential substance abuse problems.
- Documentation establishing the qualifications of individuals providing rehabilitation services for the program.
- Documentation indicating the followup program utilized for each covered employee identified as having an active substance abuse problem requiring treatment by an EAP or a substance abuse professional.
- Documentation indicating that Amtrak is implementing the EAP/SAP followup plans for each employee identified as having an active substance abuse problem.

Conclusion

FRA appreciates Amtrak's cooperation in providing this important information regarding its RedBlock program. If you have any additional questions concerning the information requested, please contact Mr. Allen, FRA's Alcohol and Drug Program Manager, at: 1200 New Jersey Avenue SE; Washington, DC 20590; telephone: (202) 493-6313; email: Lamar.Allen@dot.gov.

Sincerely,



Edward W. Pritchard
Director, Office of Safety Assurance and Compliance