

Arbitrator Training: Passenger Rail Operations at Amtrak Under the Railway Labor Act



Safety Briefing

- Location – Building address, defibrillator, exit plan and meetup point
- Volunteer to call 911 (local phone), CPR qualifications
- Surrounding hazards
- Active Shooter protocol
- General – location of restrooms, coffee, water, etc.

Safety Briefing – Site Visits

- Operating Departments will provide on-site safety briefings
- Personal protective equipment (PPE) for visits
 - Department will provide vests, safety glasses, and hard hats
 - Course participants should provide and wear their own safety boots on the tour per the guidelines below:
 - Closed toe shoes with a defined heel. The defined heel must have a near 90-degree notch with a minimum height of 3/8 inch and a maximum height of 2 inches.
 - Shoes in good condition. Sole must not be loose, thin, cracked, rippled, or wedge type.

Introductions

Overview

- History of Amtrak
- Operations at Amtrak
- Labor Organizations at Amtrak
- The Railway Labor Act (RLA)
- Amtrak, Commuters, and Freights – Similarities & Differences
- Just Culture at Amtrak
- Amtrak's Discipline Policy and Process, Claims & Grievances

Amtrak's History

- Historically passenger service run by freight railroads
- WW II
 - Gas rationing
 - Railroad intercity passenger market share peaked at 74%
- 50's/60's – Market share declined rapidly
 - National Highway System
 - Airports
- Late 60's/early 70's – passenger rail travel in crisis
 - June 1970 - Penn Central – Largest railroad in N.E. – verge of bankruptcy
 - Filed to cancel 34 intercity passenger train routes

Amtrak's History – cont.

- October 1970 - Congressional Intervention
 - National Passenger Service Act signed
- May 1, 1971 – Amtrak Begins Operations
 - Government funding for passenger rail service
 - Amtrak runs on freight RR right-of-way
- 1976 - Railroad Revitalization and Regulatory Reform Act
 - Penn Central NEC transferred to Amtrak
 - Became main source of revenue
- 1978 – Inspector General Act – Amtrak OIG
 - Independent oversight through audits/investigations

Operations at Amtrak



Operations at Amtrak

- Amtrak, The Company – Background
 - Product: Intercity rail passenger service (May 1971)
 - ~83% of the workforce is represented: 20,320 employees (16,746 union, 3,574 non-union)(November 2022)
 - Over 500 stations, 46 states
 - 22,000 route miles – predominately over Class I Freight trackage
 - Of route miles:
 - 750 track miles owned/maintained by Amtrak – primarily in Northeast, Michigan
 - Perform maintenance of way and dispatching, primarily along Northeast Corridor (except Metro North), Albany and Michigan Lines

Operations at Amtrak – cont.

- Amtrak, The Company – Background – cont.
 - Perform train operation and maintenance of equipment nationwide
 - Multiple equipment service and inspection facilities; three (3) heavy locomotive and car overhaul facilities
 - Amtrak assumed operations and union representation from freights
 - Non-operating: 1971-1983; Operating: 1983-1990s

Operations at Amtrak (Cont.)

- Perform operating and/or maintenance services for various commuter systems and states:

Commuter Service	Principal Amtrak Provided Services
DelDOT (Wilmington)	Train access, electric propulsion, capital improvement agreement, shared stations.
LIRR (Long Island)	Capital improvement agreement; train access, electric propulsion, NY Penn Station shared use.
MARC (Maryland- DC)	Train crews/operations, equipment maintenance (Penn Line service). Train access, electric propulsion; capital improvement agreement, shared stations.
MBTA (Boston area)	Train access and track maintenance; train dispatching of Attleboro Line and South Station.
Metra (Chicago area)	Train access, shared station.
Metrolink (Los Angeles area)	Train crews/operations.
NJ TRANSIT (NY-Trenton)	Train access, electric propulsion, shared stations, mechanical services, capital improvement agreement.
RIDOT (Providence Area)	Train access, capital improvement agreement, shared station.
SEPTA (Philadelphia area)	Train access, electric propulsion, capital improvement agreement, shared stations.
Shore Line East (New Haven east)	Train crews/operations; equipment maintenance. Train access, shared stations.
Sounder (Seattle)	Equipment maintenance (at Amtrak maintenance facility).
Virginia Railway Express (Northern Virginia- DC)	Train access and track maintenance within the terminal to storage yard; capital improvement agreement, shared station .

–NOTE: Also now operate and maintain former CSX Albany (NY) and former NS Michigan Lines (MI).

Operations at Amtrak (Cont.)

- Current State Trains – primarily operation & maintenance of equipment
 - NOTE: Under Section 209 of PRIIA, States paying close to full share – “educated consumers” and can bid
 - ex: Indiana; Midwest RFI

State/Agency	Service/Corridor
CA - SJJPA	San Joaquin
CA - LOSSAN JPA	Pacific Surfliner
CA - CCJPA	Capitol Corridor
Illinois	Lincoln Service, Illini/Saluki, and Illinois Zephyr/ Carl Sandburg
Illinois	Hiawatha Service
Indiana	Hoosier State
Michigan	Pere Marquette, Blue Water; Wolverine; former NS line (post 2013)
Missouri	Missouri River Runner
New York	Adirondack; Empire Service; former CSX line (post 2013)
NNEPRA	Downeaster
North Carolina	Piedmont, Carolinian
Oklahoma	Heartland Flyer
Oregon	Cascades
Pennsylvania	Keystone Service; Pennsylvanian (post 2013)
Texas	Heartland Flyer
Vermont	Vermonter, Ethan Allen Express
Virginia	NE Regional - Extension to Roanoke; Norfolk, Richmond
Washington	Cascades
Wisconsin	Hiawatha

Trains & Routes



Labor Organizations at Amtrak



Labor Organizations at Amtrak

- 15 organizations
- 2 councils (Amtrak Service Workers Council and Joint Council of Carmen)
- 23 labor agreements
- 16,746 union represented employees (November 2022)

Amtrak Unions with Illustrative Job Titles/Occupations

UNION	JOB TITLE EXAMPLE
Transportation Communications International Union an affiliate of IAM	
Clerical	Ticket Clerks/Agents, Baggage men, Secretaries, Data Entry Clerks, Reservation Sales Agents, Material Control Clerks
TC Division (Tower)	Block Operators
American Railway & Airway Supervisors Association (ARASA) Mechanical Foremen	Foremen I, II, III
American Railway & Airway Supervisors Association (ARASA) MW Supervisors	Supervisors, Asst. Supervisors, General Foremen of C&S, ET, B&B, Track
American Railway & Airway Supervisors Association (ARASA) OBS Supervisors	Cus. Service Qual. Supervisors, Admin. Chiefs, Crew Base Supervisors
American Train Dispatchers Association	Power Directors, Train and Load Dispatchers
Sheet Metal Air Rail Transportation Workers Conductors Stewards Yardmasters Sheet Metal Workers	Passenger Conductors & Asst. Passenger Conductors Dining Car Stewards Yardmasters Pipefitters, Plumbers, Sheet Metal Workers
UNITE-HERE	Chefs, Service Attendants, Food Specialists, Train/Sleeping Car Attendants

Amtrak Unions with Illustrative Job Titles/Occupations, cont.

UNION	JOB TITLE EXAMPLE
Fraternal Order of Police (FOP)	Sergeants, Detectives, Police Officers, Special Agents
Brotherhood of Locomotive Engineers and Trainmen (BLET)	Passenger Locomotive Engineers
Brotherhood of Maintenance of Way Employees Division (BMWED)	Maintenance of Way Forces: Track, Electric Traction & Structures/Facility , Foreman, Trackmen, Equipment Operators, Welders, B&B Mechanics and Linemen
Brotherhood of Railroad Signalmen (BRS)	Signalmen, Maintainers, Inspectors, Foremen
International Brotherhood of Boilermakers and Blacksmiths (IBBB)	Boilermakers and Blacksmiths
International Association of Machinist and Aerospace Workers (IAM)	Machinists
International Brotherhood of Electrical Workers (IBEW)	Electricians and Technicians
National Conference of Firemen and Oilers Division of Service Employees International Union (NCF&O)	Utility Workers, Equipment Operators, Stationary Engineers
Transport Workers Union of America (TWU)	Chefs, Service Attendants, Food Specialists, Train/Sleeping Car Attendants, Car Repair, Coach Cleaners
COUNCILS	
Amtrak Service Workers Council – ASWC (TCU, TWU, UNITE-HERE)	Chefs, Service Attendants, Food Specialists, Train/Sleeping Car Attendants
Joint Council of Carmen, Coach Cleaners and Helpers – JCC (comprised of TCU, TWU)	Carmen and Coach Cleaners

Common Disputes in the Grievance Process – Panel Discussion

10 Minute Break

Amtrak, Commuters, and Freights – Similarities & Differences



Amtrak and Commuter Railroads*

Similarities

- RLA
- Union representation
- Focus on customer facing operations
- Passenger Conductors have similar duties & differ from freights
- Degrees of support and funding from public sector (political pressure)

Differences

- Commuters are entities of city/state governments
- Amtrak national network – congressional oversight
- Long distance service on Amtrak
- Office of Inspector General (OIG)
 - Independent organization with investigatory powers
- Independence of Hearing Officers in disciplinary process on Amtrak

* Does not include subway systems (WMATA, SEPTA, etc.) that do not operate on conventional railroad tracks.

Amtrak and Freight Railroads

Similarities

- RLA
- Union representation
- Work performed by crafts (other than customer-facing positions such as conductors, OBS, reservations, and red caps & some work on NEC)
- Generally same Engineering/Mechanical work network (other than NEC)
- Disciplinary process (other than Hearing Officers)
- Work rules carried over from freight agreements

Differences

- Focus on customer facing operations
- Brand/marketing considerations for direct consumer
- Work of Conductors and OBS
- Amtrak nationwide network
- Congressional oversight & funding of Amtrak versus shareholders
- Freights as host railroads
- Office of Inspector General (OIG)
 - Independent organization with investigatory powers
- Independence of Hearing Officers in disciplinary process on Amtrak

Conclusion – Topics Covered

- History of Amtrak
- Operations at Amtrak
- Labor Organizations at Amtrak
- The Railway Labor Act (RLA)
- Amtrak, Commuters, and Freights – Similarities & Differences
- Amtrak's Discipline Philosophy, Policy, and Process, Claims & Grievances

The RLA



The RLA

- The RLA (1926) governs labor relations in the Airline and Railroad industries – carriers involved in interstate activities; one of the oldest surviving pieces of United States labor legislation
- Purposes:
 - Avoid interruptions to interstate commerce or to the operation of any carrier (limit strikes and lockouts)
 - Provide for settlement of major disputes (negotiation process - formation of new contract terms: wages, rules and working conditions)
 - Provide for settlement of minor disputes (claim and grievance handling, binding arbitration)
 - Assure employee representation rights (union elections)
 - National Mediation Board (NMB) administers the RLA's key provisions: representation, arbitration and mediation.

The RLA (cont.)

- Union Representation – Key Points
 - Craft and Class Determination
 - Historical perspective
 - System-wide determination
 - Election process overseen by National Mediation Board
 - Stability

The RLA (cont.)

- Arbitration – Key Points (Section 3)
 - Claim and Grievance disputes subject to binding arbitration – not a strikable issue
 - Arbitrator costs funded by NMB except for FOP (parties pay)
 - Arbitration can create precedent, especially when interpreting contract language
- Negotiations - Key Points (Section 6)
 - Contracts never expire; they remain in effect until changed
 - Can be lengthy; designed to prevent strikes; no time limits
 - Generally, have a term; voluntary agreements anytime

The RLA (cont.)

- RLA Section 3 – “Minor Disputes”
 - Minor disputes are defined as disputes over the interpretation or application of existing contractual rights
 - Strikes over minor disputes are prohibited
 - Minor disputes are resolved initially under the dispute resolution procedures as detailed in the applicable CBA between the carrier and the impacted craft or crafts
 - If they remain unresolved, they are sent for binding arbitration
- RLA Section 6 – “Major Disputes”
 - Major disputes are those that concern a material change to the wages and conditions

The RLA (cont.)

- Negotiations Process
 - Party seeking to change contract serves bargaining demands (“Section 6 Notice”)
 - Preceded by review of operational and financial needs
 - Wages, work rules and benefit plans
 - Company officers and/or collaboration with customers, such as states and commuters
 - Direct negotiations begin within 30 days and continue until agreement or mediation requested

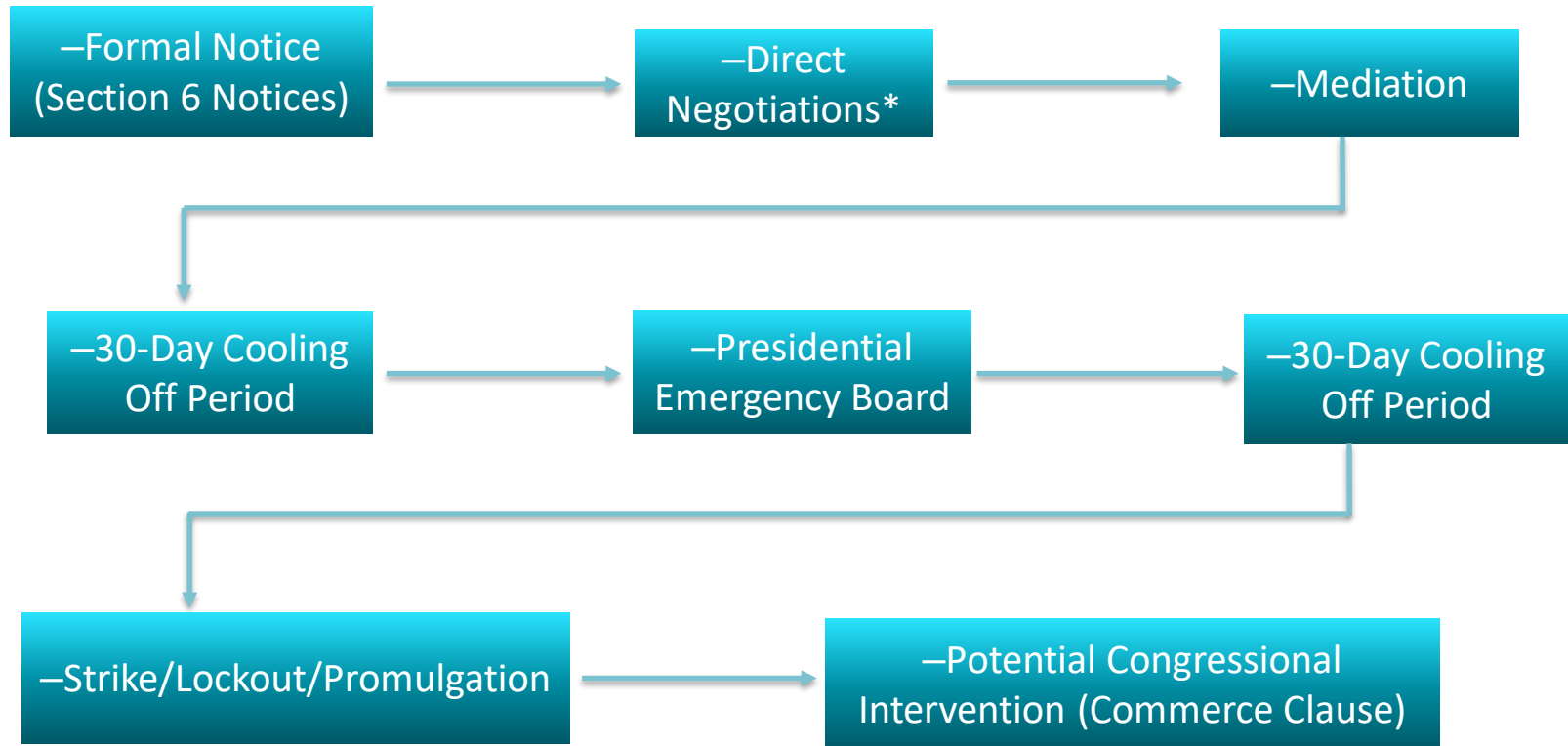
The RLA (cont.)

- Negotiations Process
 - Mediation continues until the NMB issues a “proffer of arbitration”; if rejected, the NMB releases the parties
 - If released, 30-day “cooling off” period begins
 - Thereafter, if the dispute threatens a substantial disruption to interstate commerce, the NMB may recommend appointment of a Presidential Emergency Board (PEB)

The RLA (cont.)

- Negotiations Process (Cont.)
 - PEB has 30-day period to investigate and issue report.
 - PEB makes non-binding recommendations to guide parties in further talks; final 30-day “cooling off” period begins
 - If no agreement after the 30-day cooling-off period, parties may exercise self-help
 - Congressional intervention and options include:
 - Imposition (legislation) of recommendations
 - “Baseball-style” final and binding arbitration
 - Note: Commuter Railroads are covered under amendment to provide for a second PEB if deadlock after the first PEB. (Section 9A).

Collective Bargaining – RLA Bargaining Process



*Each step after direct negotiations assumes parties unable to reach a voluntary agreement (see flowchart for further detail at each step)

Lunch

Just Culture

Amtrak's philosophy of discipline

Just
Culture

Coaching is a regular part of a manager's job

Mistakes are learning opportunities

Discipline is linked to behavior and not to outcomes

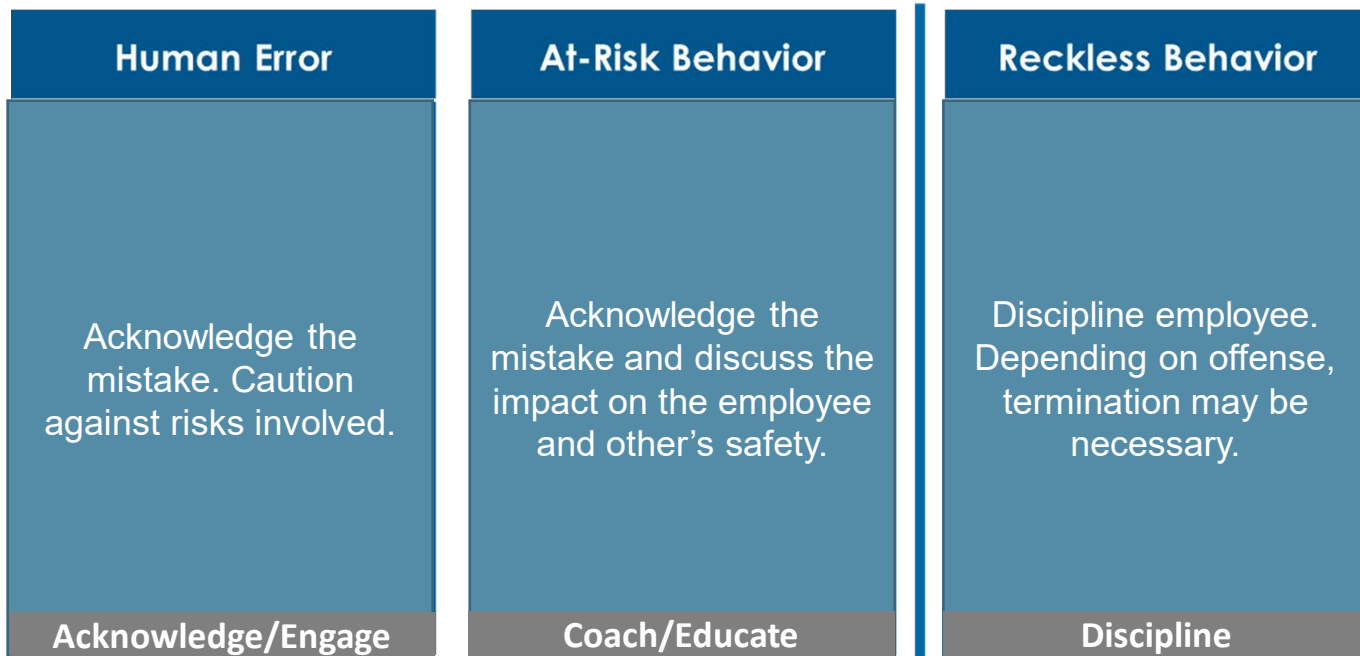
Employees are subject to punitive action for reckless or willful actions

Just Culture principles

Create an environment where employees are comfortable and encouraged to speak up, so we can become a learning organization

Human Error	At-Risk Behavior	Reckless Behavior
<i>Inadvertent action: slip, lapse, mistake</i>	<i>A choice: risk not recognized or believed justified</i>	<i>Conscious disregard of a substantial and unjustifiable risk</i>

Becoming a learning organization



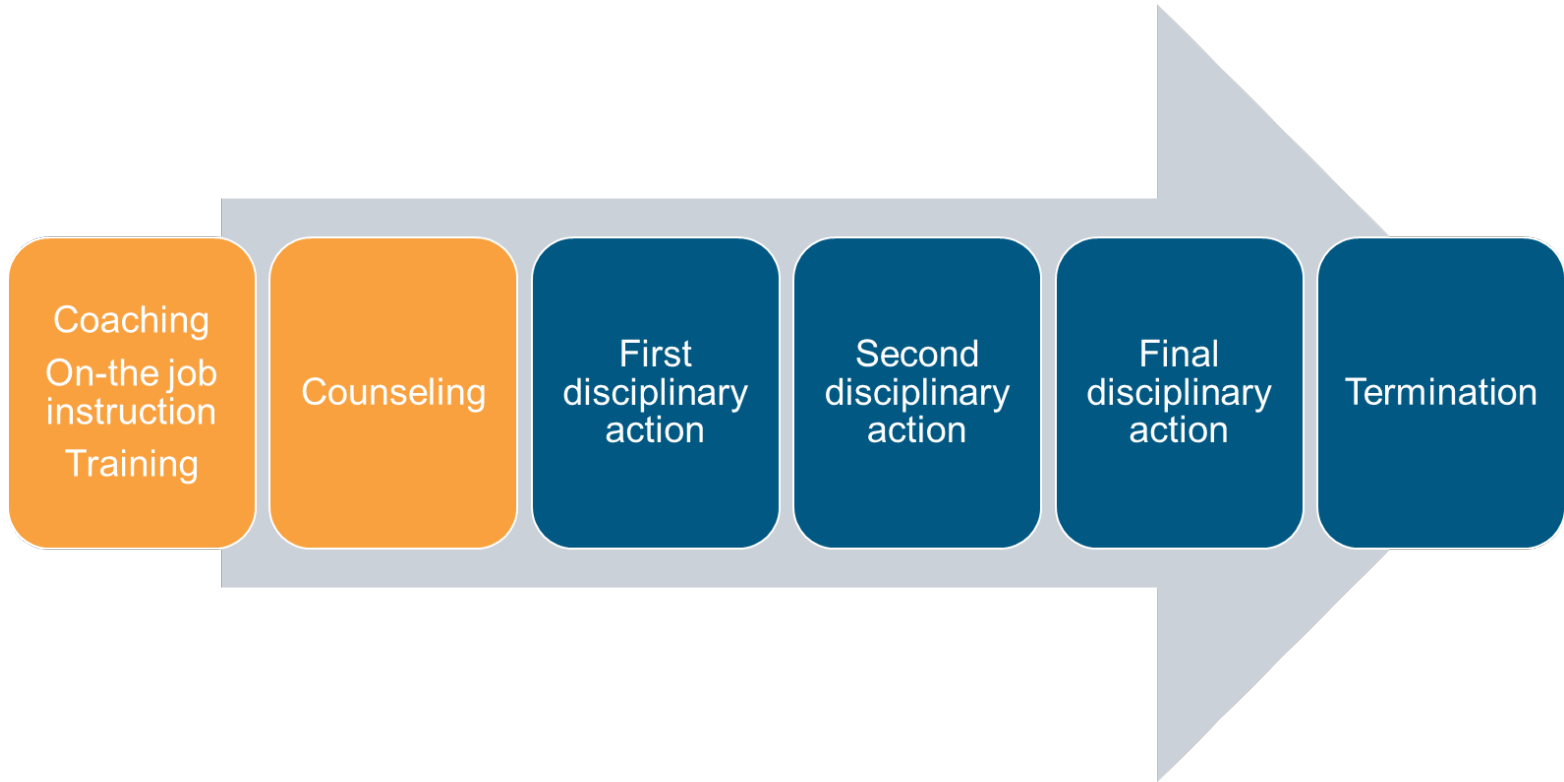
Amtrak's Discipline Policy and Process



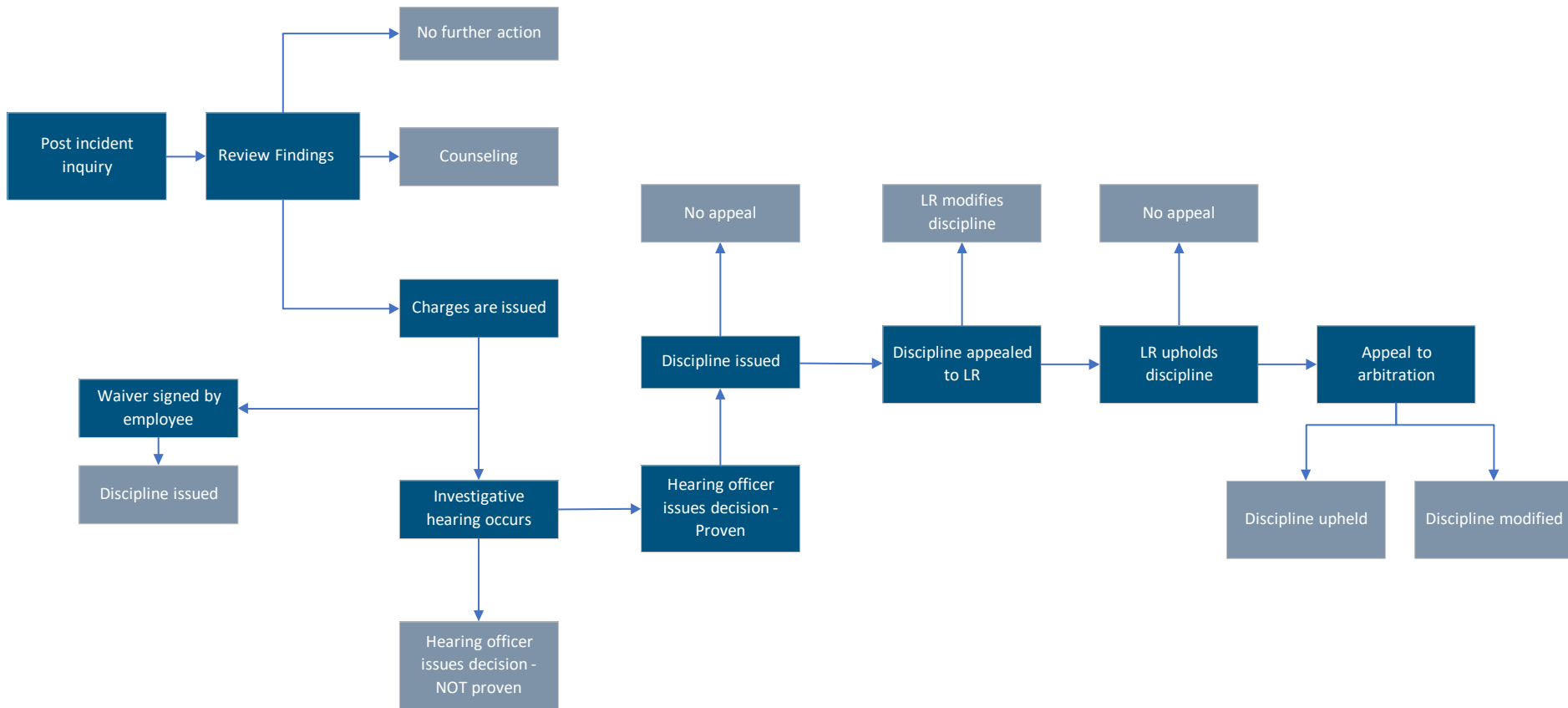
Amtrak's Discipline Policy

- Highlights of Amtrak's Agreement Employee Discipline Policy (effective January 2020):
 - Reflects Amtrak's philosophy of a just culture
 - Coaching rather than punishment for unintentional mistakes or isolated occurrences of at-risk behavior
 - Accountability for reckless, intentional or willful disciplinary incidents or for repeated violations
 - Progressive discipline does not regularly include unpaid time off
 - Schedule for the application of discipline

Amtrak's Discipline Progression



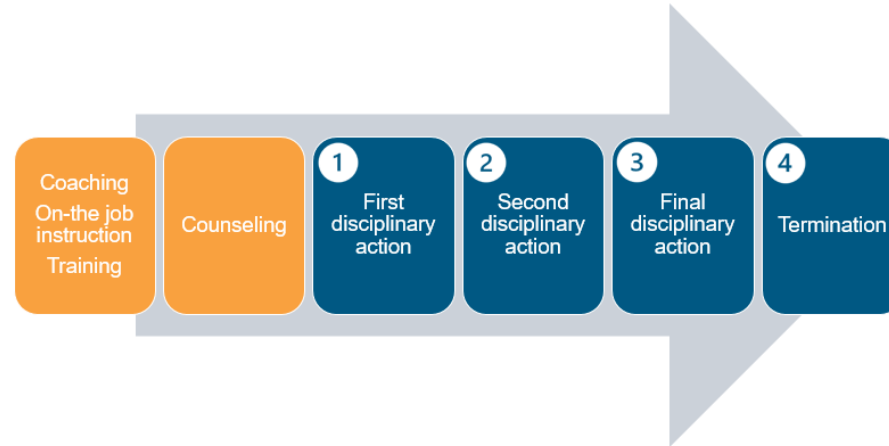
Discipline Flow Chart



Break

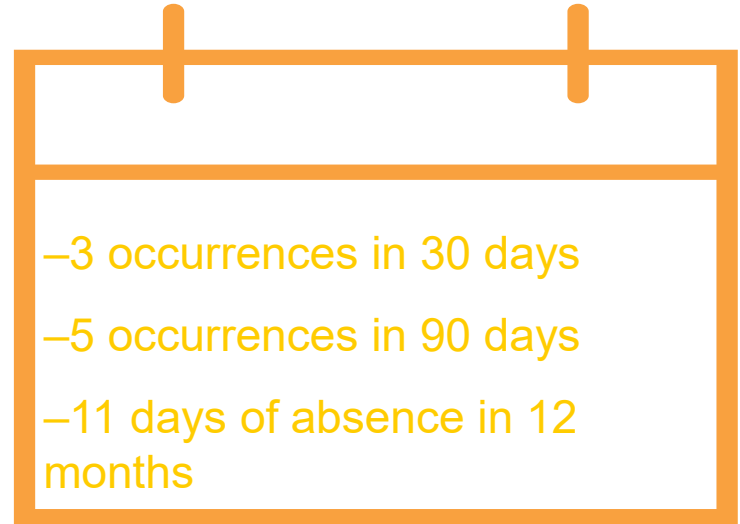
National System Attendance Policy

- No-fault policy – Employees are subject to progressive discipline after a specified number of absences or *occurrences* within a prescribed period, regardless of the reasons for the absences.
- Exceptions: Military leave, FMLA, applicable state or federal law



National System Attendance Policy

- **Excessive absenteeism** – subject to progressive discipline when an employee's record shows any of the following:
- **Absent without notice** – also known as “no-call, no-show”, can be a serious violation resulting in charges other than NSAP



Disciplinary Investigations and Hearings

- Amtrak's Office of Disciplinary Investigation (ODI)
 - Part of Amtrak's Employee Relations Investigations Team
 - Consists of a Sr. Manager Disciplinary Investigations, Sr. Business Analyst, and Hearing Officers
 - Hearing Officers are Amtrak employees and are responsible for:
 - Ensuring Amtrak's disciplinary investigations comply with the CBA and charged employee's due process rights
 - Serving as independent fact finders and maintaining orderly hearings (ruling on objections, evidence, etc.) in a quasi-judicial, but not formal manner:
 - » Courtroom rules of evidence can be considered but aren't dispositive
 - » Evidentiary burden of proof standard is substantial evidence, not beyond a reasonable doubt or clear and convincing
 - » Hearsay testimony may be considered and given due weight
 - Rendering a determination of whether the charges were proven based on the hearing transcript

Disciplinary Investigations and Hearings (Cont.)

- Role of Disciplinary Hearing Advocates (DHAs)
 - Like Hearing Officers, DHAs are Amtrak employees, but are advocates for Amtrak and are responsible for:
 - Representing Amtrak & presenting its case in formal investigations
 - Prior to hearing, gathering all relevant evidence & determining witnesses required to participate in the hearing
 - Sending out the letter setting forth the charges against the employee that will be investigated in the hearing within the time limits as prescribed by the CBA
 - During the investigation hearing:
 - Questioning Amtrak witnesses
 - Cross examining union/charged employee witnesses
 - Raising/responding to objections
 - After the hearing and once the Hearing Officer has reached a determination:
 - Working with the employee's managing department to determine the level of discipline assessed, if any.
 - Timely notifying charged employee & union of the disciplinary decision & sending them hearing transcript & exhibits per the CBA

Rules, Grievance, Contract Interpretation Cases

- Union has burden of proof
- Types of Cases
 - Assignment of Work
 - Who is assigned what work
 - Work schedule creation
 - Extra Board assignment
 - Hours of Service
 - OT
 - Assignment of OT
 - Limits on total OT
 - People movement
 - Bid/bump
 - Filling of vacancy
 - Qualifying period

Appeals of Discipline & Rules Cases

- Appeal process
 - Time limits for writing and responding to appeals per the CBA
 - Appeal process and arbitration under the RLA are appellate
 - No new evidence permitted – only what is in investigation transcript
 - Parties conference the appeal and if unsettled, progress to arbitration
- RLA Arbitration
 - Three Party Board made up of Union Representative, Carrier Representative, and Neutral Arbitrator
 - Appellate process means confined to the record on the property
 - Time limits for holding hearings and rendering decisions per NMB
 - Awards final and binding on the parties

What's Next

- Site visits to Amtrak yard and maintenance facilities
- Upon successful completion of program – opportunity to serve as arbitrator on boards

General Q&A With Instructors & Panel Members

