

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

International Association of Sheet Metal, Air,  
Rail, and Transportation Workers,  
Transportation Division – Illinois Legislative  
Board; and Brotherhood of Locomotive  
Engineers and Trainmen – Illinois State  
Legislative Board,  
Complainants,

v.

Union Pacific Railroad Company, A Delaware  
Corporation,  
Respondent.

Formal Complaint and Request for Declaratory  
Relief

T20-0082

**SERVED ELECTRONICALLY  
AND VIA U.S. MAIL**

**ORDER**

By the Commission:

**PROCEDURAL HISTORY**

On December 28, 2020, the International Association of Sheet Metal, Air, Rail, and Transportation Workers, Transportation Division – Illinois Legislative Board; and Brotherhood of Locomotive Engineers and Trainmen – Illinois State Legislative Board (Complainants) filed the above-captioned verified Complaint with the Illinois Commerce Commission (Commission) naming Union Pacific Railroad Company (UP) as Respondent, and seeking Declaratory Relief.

On May 27, 2021, UP filed a Motion to Dismiss the Formal Complaint and Request for Declaratory Relief. On June 1, 2021, Complainants filed a Motion for Leave to File First Amended Formal Complaint. At a status hearing on June 3, 2021, the Administrative Law Judge (ALJ) ruled on Complainants' Motion granting them leave to file a First Amended Formal Complaint instanter.

On June 18, 2021, UP filed a Motion to Dismiss the Amended Formal Complaint. On July 2, 2021, Complainants filed a Response to UP's Motion. On July 9, 2021, UP filed a Reply to Complainants' Response. On August 3, 2021, the Office of Transportation Counsel filed a Statement at the ALJ's request on UP's Motion to Dismiss and subsequent filings. Oral Arguments were held on August 25, 2021.

**RELEVANT LAW**

**92 Ill. Adm. Code 1550.10(b)**  
**Section 1550.10 Purpose, Scope and Application**

- a) The purpose of this Part is to prescribe regulations establishing minimum standards for the safe transportation of employees to and from their places of employment and during the course of their employment.
- b) These regulations shall have to apply to every motor vehicle acquired after the effective date hereof, which is designated primarily for highway use and which is used to transport employees whether or not used on a public highway, including motor vehicles regularly assigned to a gang or crew with headquarters or assembly point within Illinois, and including motor vehicles headquartered elsewhere but frequently used in Illinois. Motor vehicles owned or operated prior to effective date hereof are not required to conform with these regulations, but motor vehicles purchased, leased or otherwise acquired after the effective date of these regulations (including those previously used in other states and reassigned for regular use in Illinois, but not including existing vehicles assigned to system gangs even though such system gangs may be temporarily working in Illinois) shall conform hereto. These regulations shall not apply to taxicabs or other vehicles licensed by competent authority to transport the public, and used by a railroad to transport its employees.

## **625 ILCS 5/18c-7401(6)(b) – Safety requirements for track, facilities, and equipment.**

### **(6) Packages Containing Articles for First Aid to Injured on Trains.**

- (b) A vehicle, excluding a taxi cab used in an emergency situation, operated by a contract carrier transporting railroad employees in the course of their employment shall be equipped with a readily available first aid kit that contains, as a minimum, the same articles that are required on each train or engine.

## **625 ILCS 57/ - Transportation Network Providers Act**

### **Sec. 5 Definitions.**

"Transportation network company" or "TNC" means an entity operating in this State that uses a digital network or software application service to connect passengers to transportation network company services provided by transportation network company drivers. A TNC is not deemed to own, control, operate, or manage the vehicles used by TNC drivers, and is not a taxicab association or a for-hire vehicle owner.

"Transportation network company driver" or "TNC driver" means an individual who operates a motor vehicle that is:

- (1) owned, leased, or otherwise authorized for use by the individual;
- (2) not a taxicab or for-hire public passenger vehicle; and
- (3) used to provide transportation network company services.

## **625 ILCS 57/25**

### **Sec. 25. Safety.**

- (a) The TNC shall implement a zero tolerance policy on the use of drugs or alcohol while a TNC driver is providing TNC services or is logged into the TNC's digital network

but is not providing TNC services.

(b) The TNC shall provide notice of the zero tolerance policy on its website, as well as procedures to report a complaint about a driver with whom a passenger was matched and whom the passenger reasonably suspects was under the influence of drugs or alcohol during the course of the trip.

(c) Upon receipt of a passenger's complaint alleging a violation of the zero tolerance policy, the TNC shall immediately suspend the TNC driver's access to the TNC's digital platform, and shall conduct an investigation into the reported incident. The suspension shall last the duration of the investigation.

(d) The TNC shall require that any motor vehicle that a TNC driver will use to provide TNC services meets vehicle safety and emissions requirements for a private motor vehicle in this State.

(e) TNCs or TNC drivers are not common carriers, contract carriers or motor carriers, as defined by applicable State law, nor do they provide taxicab or for-hire vehicle service.

### **FIRST AMENDED FORMAL COMPLAINT AND REQUEST FOR DECLARATORY RELIEF**

In their First Amended Formal Complaint and Request for Declaratory Relief, Complainants seek relief related to the use of Uber Technologies, Inc. (Uber) by the UP to transport its railroad employees during the course of their employment. Count I of the Complaint requests that the Commission find that the use of Uber by UP violates safety standards contained in 92 Ill. Adm. Code Part 1550, the Illinois Vehicle Code, and the Illinois Commercial Transportation Law (ICTL) and, in turn, order UP to comply with the safety standards and to cease and desist the use of carriers that are not in compliance.

Complainants cite several safety requirements of Part 1550 that may not be followed by Uber when transporting UP employees. Part 1550 requires that all vehicles used for the transportation of employees must carry an adequate first-aid kit suitable for the number of employees transported. 92 Ill. Adm. Code 1550.50(a). The vehicles must be equipped with a fire extinguisher meeting minimum capacity requirements. 92 Ill. Adm. Code 1550.50(b). Vehicles may only be operated by experienced, competent, qualified, and licensed drivers, and the vehicles must observe all Motor Vehicle Laws of the State of Illinois. 92 Ill. Adm. Code 1550.60.

Count II of the Complaint requests a declaratory ruling that Uber is operating as a contract carrier subject to said statutory and regulatory safety standards. In the alternative, if Uber is not a contract carrier, UP has a duty to ensure that Uber complies with said safety standards and that by using Uber, UP has breached its duty. Complainants assert that each time UP uses or hires Uber or an Uber driver to transport its railroad employees in the course of their employment, Uber and/or the Uber driver is operating as a contract carrier, subject to the various requirements of the ICTL. Complainants cite several statutory sections that may not be followed by Uber, such as, the requirement to limit the maximum hours of service for any driver transporting railroad employees. 625 ILCS 5/18b-106.1. As well as the requirement that any contract carrier transporting railroad employees must submit to a safety test and secure a certificate of safety. 625 ILCS 5/13-101.

Count III seeks the application of higher safety standards pursuant to 92 Ill. Adm. Code

1550.10(d), which allows the Commission, “upon written application or upon its own motion, may in a particular case, after notice and hearing, modify or grant exceptions to any of these regulations where their effect is unduly burdensome, or may prescribe higher standards than those herein prescribed where such higher standards are necessary for the safety of employees.”

Count IV seeks the application of higher safety standards pursuant to 92 Ill. Adm. Code 1550.10(d) in response to the Covid-19 pandemic.

### **UP'S Motion to Dismiss the First Amended Formal Complaint**

UP states that there is no dispute in factual issues, it has a contract for a technology service that enables UP to request on-demand ground transportation from independent third- party providers. UP utilizes Uber to transport its employees in the course of their employment. (Oral Argument Tr. Pg. 10; Motion Pg. 2) UP argues that the Amended Complaint must be dismissed because Part 1550 has express language that exempts “taxicabs or other vehicles licensed by competent authority to transport the public, and used by a railroad to transport its employees.” The exemption describes the vehicles used in transportation network company (TNC) services and operated by TNC drivers using technology systems under license to Uber Technologies, Inc., which UP has begun using for on-the-job transportation. The TNC drivers’ vehicles being used to transport UP’s employees are not taxicabs but they are “other vehicles licensed by competent authority to transport the public and used by a railroad to transport its employees.” 92 Ill. Adm. Code 1550.10(b) By enacting the Transportation Network Providers Act (TNPA), the Illinois legislature created a regulatory scheme to allow TNC services and, therefore, such services are “licensed by competent authority.” (Oral Argument Tr. Pgs. 14-15) According to UP, railroads always have had the option to use taxicabs or other vehicles licensed to transport the public for crew transportation under Part 1550 and such vehicles have never been subject to regulation by the Commission.

UP further argues that the request to have UP cease and desist from utilizing Uber and/or Uber drivers, for the transportation of UP employees is preempted by federal law. Citing the ICC Termination Act of 1995 (“ICCTA”) 49 U.S.C. § 10501(b), UP asserts that state action, other than localized health and safety regulations, must not discriminate against railroads. (Motion Pg. 3). UP claims the relief sought would not apply to the public or other employers, including UP’s competitors and therefore discriminates against UP.

UP also argues the remainder of Count I and all of Count II should be dismissed for lack of jurisdiction. If the Commission were to deem Uber and/or Uber drivers to be contract carriers, such action would be prohibited by the Transportation Network Providers Act (TNPA”), which regulates the provision of TNC services in Illinois. 625 ILCS 57/. Under the TNPA, “TNCs or TNC drivers are not common carriers, contract carriers or motor carriers, as defined by applicable State law, nor do they provide taxicab or for-hire vehicle service.” 625 ILCS 57/25(e).

Lastly, UP argues that Complainants’ request for the Commission to prescribe higher safety standards whenever UP utilizes Uber to transport its employees by invoking Part 1550.10(d) of the administrative rules would be a misapplication of the rule.

## **STAFF'S POSITION STATEMENT**

Staff filed a position statement on the Motion to Dismiss the First Amended Formal Complaint at the request of the ALJ. Staff provides a history of the rules on motor vehicles used by common carriers by rail to transport employees to and from their places of employment or during the course of their employment. Staff notes that Part 1550 was codified in 1984 and included the exemption language concerning taxi cabs and other vehicles licensed by competent authority to transport the public. Staff notes that the historical record does not contain information about the intent behind the exemption. Staff contends that the plain language of Rule 1550.10(b) should be applied and that Uber drivers fall within the scope of the broad and general category of “other vehicles licensed by competent authority to transport the public.” (Staff Statement Pg. 5)

Staff also notes the Wisconsin Public Service Commission (WSPC) reached a similar result in 2018 when it found that identical language as Rule 1550.10(b) exempted third-party companies from rules on motor vehicles and the transport of railroad employees. *Investigation on the Commissioners own motion concerning unsafe transport of railroad employees and compliance with the written reporting requirements for railroad employees, 9005-RV-105, 2018 WL 2086064 (Wis. P.S.C.)* Although the WPSC’s investigation did not involve TNC services like Uber, they did consider railroad employee transport by third-party contractors.

Staff further states that the plain language of the Transportation Network Providers Act defeats the argument that Uber is subject to contract carrier requirements in the Illinois Vehicle Code and the Illinois Commercial Transportation Law. Pursuant to the TNPA, “TNCs or TNC drivers are not common carriers, contract carriers or motor carriers, as defined by applicable State law, nor do they provide taxicab or for-hire vehicle service.” 625 ILCS 57/25(e).

Staff recommends that if the Commission determines that TNCs are exempt pursuant to Rule 1550.10(b) and not contract carriers, railroads should voluntarily adopt current standards and any additional standards addressing safety concerns specific to TNC drivers. Staff suggests that transportation agreements with TNCs should require its drivers and their vehicles:

1. Have the minimum insurance coverage required under 625 ILCS 5/8-101.
2. Submit to a vehicle safety test prior to the execution of the agreement and subsequent safety tests every six months.
3. Are limited to 12 hours of vehicle operation per day, 15 hours of on-duty service per day, and 70 hours of on-duty service in seven consecutive days, and where any driver who has 12 hours of vehicle operation per day or 15 hours of on duty service per day must have at least eight consecutive hours off duty before operating a vehicle again.
4. Shall be equipped with a readily available first aid kit that contains, as a minimum, the same articles that are required on each train or engine.

## **COMMISSION ANALYSIS AND CONCLUSION**

The issue presented is whether UP's use of Uber to transport its employees to and from their places of employment or during the course of their employment violates the safety standards contained in 92 Ill. Adm. Code Part 1550, the Illinois Vehicle Code, or the Illinois Commercial Transportation Law. Part 1550 of the rules prescribe regulations establishing minimum standards for the safe transportation of employees to and from their places of employment and during the course of their employment. The rules do not apply to taxicabs or other vehicles licensed by competent authority to transport the public, and used by a railroad to transport its employees.

The Transportation Network Providers Act defines a transportation network company as a company that uses a digital network or software application service to connect passengers to transportation network company services provided by transportation network company drivers. 625 ILCS 57/5. Uber is a transportation network company that is authorized to operate in Illinois pursuant to the TNPA. As such, Uber is licensed by competent authority to transport the public and, when used by a railroad to transport its employees, is exempt from the safety standards prescribed by Part 1550 of the administrative rules.

Likewise, pursuant to the TNPA, TNCs and TNC drivers are not common carriers, contract carriers or motor carriers, as defined by applicable State law, nor do they provide taxicab or for-hire vehicle service. 625 ILCS 57/25(e). Thus, the safety standards prescribed by the ICTL do not apply to the transport of UP employees by Uber. 625 ILCS 5/18c-7401(6)(b).

For the foregoing reasons, Counts I and II of the Complainants' First Amended Formal Compliant and Request for Declaratory Relief are dismissed, Counts III and IV are rendered moot, and the Motion to Dismiss the First Amended Formal Complaint and Request for Declaratory Relief is granted.

## **PROPOSED ORDER**

A Proposed Order was served on the parties on November 22, 2021. No Briefs on Exception were filed.

## **FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having reviewed the entire record, finds that:

- (1) The Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (2) The Petitioner, International Association of Sheet Metal, Air, Rail, and Transportation Workers, Transportation Division – Illinois Legislative Board; and Brotherhood of Locomotive Engineers and Trainmen – Illinois State Legislative Board, are legislative boards established under the laws of the State of Illinois;

- (3) Respondent, Union Pacific Railway Company, is a rail carrier engaged in the transportation of either or both property and passengers for hire in the State of Illinois, as defined by the Illinois Commercial Transportation Law "ICTL", 625 ILCS 5/18/c- 1104(30);
- (4) The recitals of fact and conclusions of law contained in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law; and
- (5) The First Amended Formal Complaint filed on June 3, 2021, should be dismissed and the Motion to Dismiss the First Amended Formal Complaint and Request for Declaratory Relief should be granted.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission, that the Motion to Dismiss the First Amended Formal Complaint and Request for Declaratory Relief is granted, and the First Amended Formal Complaint is dismissed.

IT IS FURTHER ORDERED that the Commission shall retain jurisdiction for the purpose of issuing any Supplemental Order or Orders as it may deem necessary.

IT IS FURTHER ORDERED that this is a final Order subject to 83 Ill. Adm. Code 200.880(d) which provides that no appeal shall be allowed unless an application for rehearing shall first have been filed and disposed of by the Commission; Administrative Review is governed by Sections 2201 through 2206 of the Illinois Commercial Transportation Law (625 ILCS 5/18c) and is subject to the Administrative Review Law to the extent made applicable in those sections.

By Order of the Commission this 5<sup>th</sup> day of January 2022.

(Signed) CARRIE ZALEWSKI  
CHAIRMAN