

1338 STOP: NONOPERATION OF RAILROAD CROSSING SIGNALS

A driver who intends to cross a railroad track may not rely on the nonoperation of a safety device (absence of the usual flagman) as an absolute assurance of safety and may not proceed without regard to his or her own safety; the driver must still exercise ordinary care for his or her own protection. However, the presence or absence of warning guards and the proper functioning or nonfunctioning of guards or signals are circumstances to be considered in determining whether the driver used ordinary care.

COMMENT

The instruction and comment were originally published in their present form in 1962. The instruction was revised in 1992 and 2008. Editorial changes were made in 1992 to address gender references in the instruction.

This instruction is to be used, in the proper instances, as a supplement to an instruction on lookout, listening, speed, or management and control, as may be appropriate.

Wasikowski v. Chicago & N. W. Ry., 259 Wis. 522, 525, 49 N.W.2d 481, 482 (1951); Gundlach v. Chicago & N. W. Ry., 172 Wis. 438, 441, 179 N.W. 577, 578, 885 (1920).