

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION
WASHINGTON, D.C.**

**Appeal of L.C. Rochner
(FRA Locomotive Engineer Certification Case)
Docket No. EQAL 2008-05**

ADMINISTRATOR'S FINAL DECISION ON APPEAL

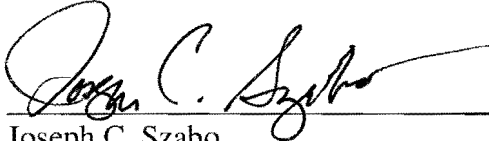
It is unclear under what authority the Appellant, Mr. L.C. Rochner, appeals the January 7, 2009 decision of the Locomotive Engineer Review Board (LERB) granting him relief from the Union Pacific Railroad Company (UP)'s decision to decertify his locomotive engineer certification. However, I can assume it is one of only two authorities available to me. First, under 49 C.F.R. §240.403(e), if a petition to the LERB is denied as untimely, the party whose petition is denied may file an appeal directly with me. And second, under 49 C.F.R. §240.411(a), I may hear appeals from a party aggrieved by a decision from the presiding officer, i.e., the Administrative Hearing Officer (AHO).

This appeal is neither a direct appeal to me for untimeliness nor an appeal from a decision of the AHO. The LERB granted Mr. Rochner's petition because it found that the UP did not present substantial evidence to support its decertification decision.¹ Thus, Appellant's petition

¹ The LERB's decision to grant the petition also included a discussion of two procedural issues. These procedural issues are the subject of Appellant's appeal. However, subject-matter jurisdiction is a threshold issue, without which I cannot opine on any issues, whether substantive or procedural. Cf. Steel Co., aka Chicago Steel & Pickling Co. v. Citizens for a Better

was heard by the LERB and not considered untimely. In addition, Appellant's petition was to the LERB who decided his petition. In other words, the decision was that of the LERB and not that of the AHO. For the reasons set forth above, I find I must dismiss Appellant's appeal for lack of jurisdiction because neither 49 C.F.R. §240.403(e) nor §240.411(a) provides me with authority to hear this appeal.

Dated: 12/31/09



Joseph C. Szabo
FRA Administrator

Environment, 523 U.S. 83, 94 (1998) (“Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.”) (citing Ex parte McCardle, 74 U.S. 506, 7 Wall. 506, 514, 19 L. Ed. 264 (1869)).

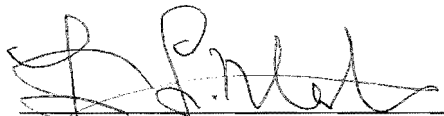
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Docket No. EQAL 2008-05

The undersigned hereby certifies that the foregoing document, **Administrator's Final Decision**, has been served on the parties named below via Certified U.S. Mail:

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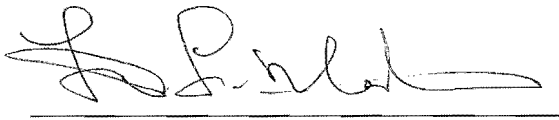
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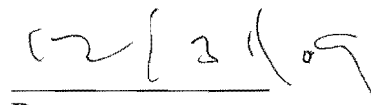
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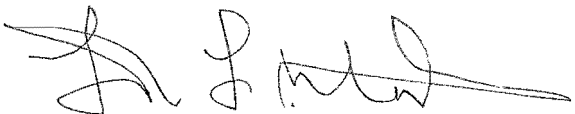
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