

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION
Washington, D.C. 20590**

Locomotive Engineer Review Board

Decision Concerning
Union Pacific Railroad Company's
Revocation of Mr. T. J. Hunt's
Locomotive Engineer Certification

FRA Docket Number EQAL-2010-46

Decision

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of the Union Pacific Railroad Company (UP) to revoke Mr. T. J. Hunt's (Petitioner) locomotive engineer certification (certification) in accordance with the provisions of Title 49, Part 240, of the Code of Federal Regulations (49 C.F.R. Part 240). The Board hereby determines that UP's decision to revoke Petitioner's certification was improper for the reasons set forth below.

Background

By Notice of Investigation dated June 15, 2010 (Notice), UP requested that Petitioner report for an "investigation and hearing to develop the facts and determine your responsibility, if any, concerning the following incident: While employed as a Engineer on the MSBPC-07 at Idaho Falls, near milepost 187.5, Montana Subdivision, at approximately 0100 hours, on Tuesday, June 8, 2010, you allegedly failed to stop short of red flag while moving at restricted speed on main track in yard limits after passing an approach indication." The Notice also notified Petitioner that he was being withheld from service pending the outcome of the investigation.

UP convened an investigation and hearing on June 30, 2010. Subsequently, by letter and Post-Hearing Notification of Certificate Revocation dated July 9, 2010, UP notified Petitioner that his certification was revoked for one month ending on July 8, 2010, for violating 49 C.F.R. § 240.117(e)(1) and UP's General Code of Operating Rules (GCOR) 6.27, Special Instructions 5.4.7, and Safety Rules 6.13.

By a timely filed petition for review (Petition) received by the FRA Docket on November 2, 2010, Petitioner requests that the Board "[d]eclare the action taken by the Carrier as improper, this violating relevant section of 49 CFR part 240 of the final rule . . . [c]leanse any request or notification of revocation of Petitioner's Locomotive Engineer Certification made to the FRA by the Respondent Carrier or its agents . . . [and]

[o]verturn the Respondent Carrier's decision which revoked Petitioner's Engineer Certification." The Petition asserts that the revocation was improper because an intervening cause prevented or materially impaired his ability to comply with the operating rule and he was not at the controls of the locomotive at the time of the incident.

Pursuant to 49 C.F.R. §§ 240.405(b) and (c), FRA sent a copy of the Petition to UP, which was afforded an opportunity to comment. UP responded to the Petition by letter dated January 3, 2011 (UP's Response). In its Response, UP argues that Petitioner passed the red flag by an estimated 26 feet after taking no action to instruct the engineer-in-training (EIT), who was at the controls and under his supervision, to apply the brakes to stop the train or make an attempt to place the train in emergency.

Board's Determinations

Based on its review of the record, the Board has determined that:

1. On June 7, 2010, at approximately 7:00 p.m., Petitioner was called to work on train MSBPC-07 in the capacity of engineer. Tr. at 144, 146.
2. Petitioner's train crew consisted of a conductor and an EIT who was operating the train. Tr. at 38-39.
3. During the trip, it was dark and had been raining the day before. Tr. at 66, 91.
4. Unbeknownst to the crew, UP was conducting an operating rule efficiency test that night to determine the crew's compliance with a red flag stop test. Tr. at 28, 36.
5. UP placed a red flag near a highway-rail grade crossing at approximately mile post (MP) 187.5. Tr. at 30.
6. The flag was placed at a curve. Tr. at 137, 139-140, 150.
7. The flag was made of a reflective material and is illuminated by the train lights. The flag did not have a red light itself. The flag was approximately 18 inches square and was attached to a holder which mounts the flag between the rails. Tr. at 28-29.
8. During the trip, the crew observed and passed an approach signal indication at MP 189.4 and then, at approximately 12:49 a.m., passed another approach signal at MP 188.0 combined with a Yard Limit sign which required the EIT to operate at restricted speed. Tr. at 41-42, 114, 146-147, 151, Tr. Ex. 18.

9. As the train was on a left-hand curve, the crew observed the flashing red lights at the crossing, the lights of an interstate highway running parallel to the track, and an unusual light by the crossing. Tr. at 50, 67, 152.¹
10. The crew discussed the light and decided it was a reflection from a pool of water near the crossing and proceeded forward. Tr. at 61, 152, 157, 162, 167.
11. As the crew moved closer to the crossing, they realized the light was a red flag. Tr. at 50.
12. Upon discovering the red flag, the conductor instructed the EIT to put the train into emergency. Tr. at 152, 162, 167. The EIT made a brake application and then, in approximately 222 feet, the EIT placed the train into emergency. Tr. at 111-112, 152, 167.
13. The train passed the red flag by approximately 26 feet. Tr. at 37, 54, 143.
14. Neither Petitioner nor the EIT had ever encountered a red reflectorized flag used at night. Tr. 149, 159
15. UP interviewed the crew and Petitioner was removed from service pending an investigation. Tr. at 44.

Board's Analysis

Since there is no dispute that Petitioner passed the red flag without stopping, the central issue is whether the operational compliance test was fair given all of the factual circumstances. The Board finds that the test was unfair and an improper test on which to base revocation of the petitioners' certification. See 63 FR 50626, 50636 (Sept. 22, 1998) and 49 C.F.R. § 240.117(f)(3)(prohibiting the consideration of operational tests not conducted in compliance with Federal regulation or a railroad's operating rules).

There is no question that a red flag can be a stop signal under UP operating rules. See UP Rule 5.4.7, Tr. Ex. 16. Because a red flag is not a fixed signal, however, the Board expects that the flag will be clearly visible and provide an engineer with sufficient time to react and stop prior to it. Indeed, a reflectorized flag, like the one used in this case, may not be considered a properly displayed stop signal if it is not sufficiently illuminated.

Based upon the specific facts in this case, the Board has determined that the reflectorized flag was not sufficiently illuminated and did not provide the EIT with sufficient time to react and stop the train or provide Petitioner with a chance to take appropriate action to prevent the violation. Since the test was conducted at night, the flag would not have been

¹ The Board was unable to ascertain anything from the photographs from the Track Image Recorder discussed at the hearing (Tr. Ex. 25) because they were not in color and both parties informed the Board that they do not have color copies of the photographs. The Board was also unable to use the Track Image Recorder disc (Tr. Ex. 24) as the Board was only provided a photocopy of the disc and not the disc itself.

illuminated until the locomotive headlights shown on the flag. UP's placement of the flag on a curve, however, meant that the locomotive lights would not have illuminated the flag with sufficient time to react and stop the train in advance of the flag. Moreover, the placement of the flag by a highway-rail grade crossing with flashing lights further obscured the visibility of the flag.

Conclusion

Based on the above findings, the Board hereby GRANTS the Petition in accordance with the provisions of Title 49, Part 240 of the Code of Federal Regulations.

Issued in Chicago, IL on MAY 24 2011.

A handwritten signature in black ink, appearing to read "Richard M. McCord", written over a horizontal line.

Richard M. McCord
Chairman,
Locomotive Engineer Review Board

SERVICE LIST EQAL 2010-46

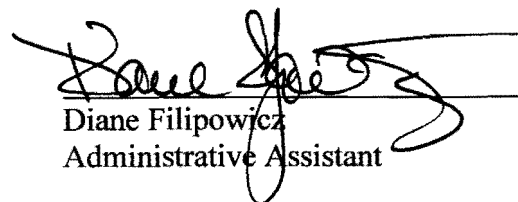
A copy of the Locomotive Engineer Review Board decision in this matter has been sent by certified mail, return receipt requested to each person shown below.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. T. J. Hunt
1515 Saratoga
Pocatello, ID 83201

Mr. Steven A. Leyshon
Vice General Chairman
Brotherhood of Locomotive Engineers and Trainmen
4380 Flowerdale Ct.
Las Vegas, NV 89103-4222

Ms. Christine J. Hampton
Union Pacific Railroad Company
1400 Douglas St. mailstop 1010
Omaha, Nebraska 68179-1010



Diane Filipowicz
Administrative Assistant

MAY 24 2011

Date

cc: FRA Docket EQAL 2010-46

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee X</p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to:</p> <p style="text-align: center; margin-top: 20px;">Mr. T. J. Hunt 1515 Saratoga Pocatello, ID 83201</p>	<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number 7008 3230 0002 3925 4886 (Transfer from service label)</p>	
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<p>1. Article Addressed to:</p> <p style="text-align: center; margin-top: 20px;">Mr. Steven A. Leyshon Vice General Chairman, BLE&T 4380 Flowerdale Ct. Las Vegas, NV 89103-4222</p>	<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number 7008 3230 0002 3925 4893 (Transfer from service label)</p>	
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<p>1. Article Addressed to:</p> <p style="text-align: center; margin-top: 20px;">Ms. Christine J. Hampton Union Pacific Railroad Company 1400 Douglas St. mailstop 1010 Omaha, Nebraska 68179-1010</p>	<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
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