

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

Locomotive Engineer Review Board

Decision Concerning
Union Pacific Railroad Company's
Decision to Revoke Mr. K. B. Dawson's
Locomotive Engineer Certification

FRA Docket Number EQAL-2012-09

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 the locomotive engineer certification (Certification) of Mr. K. B. Dawson (Petitioner) 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 not proper for the reasons set forth below.

Background

On September 30, 2011, Petitioner was the certified locomotive engineer of record for Train QNANPP-30 ("train QNANPP" or "the train"), which was operating between Nampa, Idaho and Pocatello, Idaho. Near milepost (MP) 402, the conductor, who is also a certified locomotive engineer, began operating train QNANPP. At approximately 12:03 p.m., near MP 315, the conductor, who was still operating train QNANPP, passed a signal displaying a stop indication at control point P315 (CP C315) without authority. Train QNANPP stopped approximately 1,361 feet to the rear of CP C315. The train crew consisted of Petitioner and the conductor. Petitioner was charged with violating 49 C.F.R. § 240.117(e)(1) and General Code of Operating Rules (GCOR) 1.47, 9.2.15, and 9.5 for failing to control a train in accordance with a signal indication that requires a stop before passing it.

By letter dated October 6, 2011, Petitioner was notified that he was to attend a formal investigation relating to the incident. After a combined railroad and Federal certification hearing was conducted on October 18, 2011, UP issued a notification of certificate revocation (Revocation Notification) on October 26, 2011 that stated that Petitioner's Certification had been revoked for a period of six months.

Petitioner's Assertions

A timely filed petition, which was received by FRA on February 17, 2012, requested that FRA review UP's decision to revoke Petitioner's Certification. The petition asserts that the

revocation was improper for the following reasons:

- (1) Based upon the evidence in the record, UP improperly determined that Petitioner no longer met the qualification requirements of 49 C.F.R. Part 240 by failing to take into consideration all of the facts in the case.
- (2) UP failed to consider evidence that intervening causes prevented Petitioner's ability to comply with the railroad operating rules. Those intervening causes include the facts that: (1) the conductor was operating train QNANPP when it went through CP C315 without authority, (2) train QNANPP was directed over a different main line than usual, and (3) maintenance of way employees distracted the conductor from seeing the approach signal at MP 317.

Pursuant to 49 C.F.R. § 240.405(b), (c), a copy of the petition was sent to UP on February 21, 2012, and UP was afforded an opportunity to comment. UP timely responded and, as required by 49 C.F.R. § 240.405(d)(2), provided Petitioner with a copy of the materials submitted to FRA.

UP's Response

UP responded to Petitioner's assertions as follows:

- (1) The issues raised by Petitioner are an effort to justify his lack of responsibility for and compliance with the applicable rules. Based upon the evidence in the record, train QNANPP clearly proceeded through CP C315 without authority. Moreover, Petitioner was the assigned locomotive engineer responsible for the safe operation of train QNANPP.
- (2) Petitioner failed to comply with the applicable operating rules, and there were no intervening causes that impaired Petitioner's ability to comply with those rules. First, Petitioner was in the bathroom during a critical time in the operation of train QNANPP and was therefore unable to take immediate action to control the movement of the train, as required by GCOR 1.47. Second, there is no evidence in the record that the train crew did not have familiarity with the track over which they were operating. Third, train crews are subject to many distractions, and it is critical that both the engineer and the conductor be focused on the terrain ahead of their train's movement.

Locomotive Engineer Review Board's Determination

Based on its review of the record, the Board makes the following determinations:

- 1) On September 30, 2011, Petitioner was the certified locomotive engineer of record for train QNANPP, which was operating between Nampa, Idaho and Pocatello, Idaho. Tr. at 23-24; see also Tr. at Exhibits 11, 20.

- 2) On September 30, 2011, Petitioner was not acting as a designated supervisor of locomotive engineers (DSLE), a certified locomotive engineer pilot, or an instructor engineer who was monitoring, piloting or instructing a locomotive engineer.
- 3) The conductor of train QNANPP is a certified locomotive engineer. Tr. at 26, 36, 45, 49-50, 80.
- 4) Near MP 402, the conductor of train QNANPP began operating the train. Tr. at 26; see also Tr. at Exhibits 12, 21. At approximately 12:03, near MP 315, the conductor operated train QNANPP through CP C315 without authority and stopped approximately 1,361 feet beyond CP C315. Tr. at 27-28, 75; see also Tr. at Exhibit 21.
- 5) Petitioner was not in the locomotive cab at the time that train QNANPP went through CP C315 without authority. Tr. at 50, 84-86, 90; see also Tr. at Exhibit 20.

Analysis

Petitioner's assertions are factual in nature. "When considering factual issues, the Board will determine whether there is substantial evidence to support the railroad's decision, and a negative finding is grounds for reversal." 58 Fed. Reg. 18982, 19001 (Apr. 9, 1993).

Petitioner's first assertion is that the evidence in the record does not support UP's determination that Petitioner no longer met the qualification requirements of 49 C.F.R. Part 240. The Board finds that this assertion has merit. The record establishes that the conductor of train QNANPP is a certified locomotive engineer. See Tr. at 26, 36, 45, 49-50, 80. Moreover, when train QNANPP went through CP C315 without authority, the conductor was operating the train, not Petitioner. See Tr. at 27-28, 75; see also Tr. at Exhibit 21. Furthermore, there is no evidence in the record that Petitioner was acting as a DSLE, a certified locomotive engineer pilot, or an instructor engineer who was monitoring, piloting or instructing the conductor, such that Petitioner could be held responsible under 49 C.F.R. § 240.117(c)(2) for the alleged violation.

During the hearing, UP asserted that GCOR 1.47 requires that a student engineer or other qualified employee may only operate a locomotive under the direct and immediate supervision of the locomotive engineer. See Tr. at 11; Exhibit 5 to Tr. It further argued that the conductor was not under the direct and immediate supervision of Petitioner because Petitioner was not in the locomotive cab when train QNANPP went through CP C315 without authority. See Tr. at 50, 84-86, 90; see also Tr. at Exhibit 20. It therefore concluded that Petitioner's Certification was properly revoked. GCOR 1.47, however, has no applicability for certification purposes with regard to 49 C.F.R. Part 240.

Based upon the evidence in the record, UP has not provided substantial evidence to prove that this incident was a decertifiable event as to Petitioner. See 49 C.F.R. § 240.117(c)(2). Consequently, Petitioner's Certification should not have been revoked and the Board hereby grants the petition in accordance with the provisions of 49 C.F.R. Part 240. Because the Board is

granting this petition, the Board does not need to address Petitioner's second assertion.

Conclusion

Based on the above findings and conclusions, the Board finds that the decision to revoke Petitioner's Certification as a locomotive engineer was not proper and 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 JUL 09 2012.

A handwritten signature in black ink, appearing to read "Richard M. McCord". The signature is written in a cursive style with a large, prominent "Q" at the end.

Richard M. McCord
Chairman,
Locomotive Engineer Review Board

SERVICE LIST EQAL-2012-09

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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. K. B. Dawson
5085 Arapahoe
Pocatello, Idaho 83204

Mr. Steven A. Leyshon, Local Chairman
1st Vice General Chairman
Brotherhood of Locomotive Engineers & Trainmen
4380 Flowerdale Court
Las Vegas, NV 89103-4222

Mr. Cecil Copeland
General Director, Operating Practices
Union Pacific Railroad Company
1400 Douglas St., MS 1080
Omaha, NE 68179

Ms. Rebecca Hernandez
Manager, Certification and Licensing
Union Pacific Railroad Company
1400 Douglas St., MS 1010
Omaha, NE 68179



Diane Filipowicz
Administrative Assistant

JUL 09 2012

Date

enc: Post LERB Memo

cc: FRA Docket EQAL-2012-09

SENDER: COMPLETE THIS SECTION

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- 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.

1. Article Addressed to:

Mr. K. B. Dawson
5085 Arapahoe
Pocatello, Idaho 83204

EQAL 2012-09

2. Article Number

(Transfer from service label)

7008 3230 0002 3925 9478

PS Form 3811, February 2004

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1. Article Addressed to:

Mr. Steven A. Leyshon, Local Chairman
1st Vice General Chairman
Brotherhood of Locomotive Engineers & Trainmen
4380 Flowerdale Court
Las Vegas, NV 89103-4222

EQAL 2012-09

2. Article Number

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1. Article Addressed to:

Mr. Cecil Copeland
General Director, Operating Practices
Union Pacific Railroad Company
1400 Douglas St., MS 1080
Omaha, NE 68179

EQAL 2012-09

2. Article Number

(Transfer from service label)

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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Ms. Rebecca Hernandez
 Manager, Certification and Licensing
 Union Pacific Railroad Company
 1400 Douglas St., MS 1010
 Omaha, NE 68179

EQAL 2012-09

2. Article Number
(Transfer from service label)

7008 3230 0002 3925 9508

PS Form 3811, February 2004

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 Agent Addressee

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3. Service Type

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4. Restricted Delivery? (Extra Fee)

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