

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

Appeal of The Burlington Northern and Santa Fe Railway Company

(FRA—Locomotive Engineer Certification Case)

Docket No. EQAL 94-57

THE ADMINISTRATOR'S FINAL DECISION

INTRODUCTION

Petitioner, The Burlington Northern and Santa Fe Railway Company (“BNSF”) appealed to the Administrator of the Federal Railroad Administration (“FRA”), under the provisions of 49 CFR § 240.411, from a decision of an Administrative Hearing Officer (“AHO”) dismissing BNSF’s hearing request. The FRA and the Brotherhood of Locomotive Engineers (“BLE”) filed a joint response to BNSF’s notice of appeal.

For the reasons stated below, the decision of the AHO is affirmed. Accordingly, petitioner’s administrative appeal is denied.

STANDARD FOR REVIEW

The regulation governing appeals from decisions of presiding officers (in this case an AHO) (49 CFR § 240.411) does not enunciate the standard for review; however, administrative practice suggests that the scope of review is limited to determining if the AHO’s findings of fact are supported by substantial evidence. In other words, a review must be made to determine whether the AHO relied upon such evidence in the record of the hearing as a reasonable mind

might accept as adequate to support the factual findings made.¹ But in making this review, the Administrator's discretion is not to be substituted for that of the AHO in evaluating the evidence.² And the possibility of drawing two inconsistent factual conclusions from the evidence does not necessarily indicate that the AHO's findings are not supported by substantial evidence.³ Issues of law are to be considered de novo, requiring an independent determination of the matter at stake.⁴

In this case the AHO's decision was based upon stipulated facts. The issues relevant to this appeal relate to regulatory interpretation, a matter of law. Accordingly, this decision is based upon a de novo review of the legal issues.

SYNOPSIS OF THE FACTS

The relevant factual setting is not in dispute. The locomotive engineer who was decertified by one of the predecessor railroads now constituting BNSF (Sanderson) was responsible for a train which, on April 13, 1994, passed a trackside warning detector ("TWD"), travelling at approximately 52 m.p.h. The TWD, via radio transmission, alerted the crew of a possible defect on two of the axles. The train crew slowed the train to approximately 29 m.p.h. and travelled approximately six and one-half miles to the Way Yard before stopping to inspect the train for possible defects.

¹ Edgar v. Shalala, 859 F.Supp. 521, 524 (D. Kansas, 1994).

² Talbot v. Heckler, 814 F.2d 1456, 1461 (10th Cir. 1987).

³ Consolo v. Federal Maritime Commission, 383 U.S. 607, 620, 86 S.Ct. 1018, 1026 (1966); Gouveia v. Immigration and Naturalization Service, 980 F.2d 814, 818 (1st Cir. 1992).

⁴ Janka v. Department of Transportation, National Transportation Safety Board, 925 F.2d 1147, 1149 (9th Cir. 1991).

LEGAL ISSUE TO BE DECIDED

The issue in this case is whether a stop signal transmitted by a TWD is a signal indication requiring a complete stop under 49 CFR § 240.117(e)(1) (the “Rule”), which provides, in pertinent part, as follows:

(e) A railroad shall consider violations of its operating rules and practices that involve:

(1) Failure to control a locomotive or train in accordance with a signal indication that requires a complete stop before passing it[.]

DISCUSSION

A Stop Signal Transmitted by a TWD as a Signal Indication

BNSF argues that the text accompanying the Rule clarifies that FRA intended that individual railroad operating rules and practices would control what devices or methods would be deemed to be signal indications, and that the carrier’s own rules require the crew to immediately stop a train for inspection. The text clarifying the Rule goes on to state that the FRA did not intend to limit the term to wayside signals, but rather intended to take an expansive view. Specifically mentioned in the clarifying text are “mandatory directive[s] communicated by radio.”

Applying this clarifying language, BNSF concludes that a message from a TWD must be considered to be a signal indication to which the Rule applies, and, therefore, that failure to adhere to a message from a TWD is a decertifiable event.

The FRA/BLE argue that a message from a TWD cannot constitute a signal indication under the Rule because a TWD, by its nature, provides no advance warning, since its purpose is to alert the crew to a possible defect only after the train has passed the device. The Rule triggers a decertifiable event only when an engineer passes a signal indication requiring a complete stop

before passing it. The FRA/BLE argue that the clarifying language cannot override the plain meaning of the regulatory text.

It is my decision that the plain meaning of the Rule should control. A message from a TWD cannot, by its very nature, be acted upon until after a train has passed the device. The Rule unequivocally refers to failure to adhere to a signal indication requiring a complete stop before passing it. Accordingly, failure to adhere to a message from a TWD and stop a train immediately after passing the device cannot be a decertifiable event under the Rule.

There is no need to resort to clarifying language in the Rule, or to other sources of interpretation, unless there is ambiguity in the language of the Rule itself. While deference should be given to an agency's construction of its own regulations, this deference is due only when the plain meaning of the rule is doubtful or ambiguous.⁵ Here there is no ambiguity in the language of the Rule itself. Rather the ambiguity arises from the contradictory inferences which the parties have drawn from the various attempts on the part of the agency to clarify its own regulation in supplemental text. For the reason stated above, we should not resort to this supplemental text in construing the Rule.

Consistency with Prior FRA Decisions

BNSF argues that the AHO's decision is inconsistent with prior FRA decisions concerning similar incidents involving engineers of predecessor railroads to the BNSF. As correctly pointed out by the FRA/BLE, 49 CFR § 240.409(u)(5) clearly states that the decision of an AHO is not precedential. Further, BNSF's claim of inconsistency is not supported by any explanation or case citations.

⁵ Exportal Ltda. et al. v. United States et al., 902 F.2d 45, 50 (D.C. Cir. 1990).

CONCLUSION

For the reasons stated above, the decision of the AHO is affirmed, and petitioner's appeal is denied. My decision constitutes the final action of the FRA in this matter, pursuant to 49 CFR § 240.411(e).

[original signed by]

Jolene M. Molitoris
Administrator

Dated: [July 21, 1999]