

[December 18, 2006]

Mr. K. T. Christians
Local Chairman
BLET Division 6
215 S. Marshall St.
Boone, IA 50035

Re: Appeal to the Administrator on behalf of D. J. Grimes
EQAL 2005-68

Dear Mr. Christians:

The following concerns the appeal to the Administrator you have filed on behalf of Mr. Grimes, dated October 25, 2006, citing the authority of 49 CFR § 240.411(a). In the request, you ask for reconsideration of the Locomotive Engineer Review Board's decision in the matter, and detail the reasons why you believe the LERB's decision was in error.

Upon receipt of the appeal to the Administrator, the FRA Docket Clerk sent you a letter, dated November 21, 2006, considering the appeal to be a request for a hearing pursuant to 49 CFR § 240.407, and assigning the assumed hearing request Docket No. FRA-2006-26229. The FRA Docket Clerk's actions were in error, since you did not request a hearing by FRA's administrative hearing officer, pursuant to 49 CFR § 240.207. Rather your request is clearly an appeal to the Administrator, pursuant to 49 CFR § 240.411. By copy of this letter, I am requesting the DOT Docket Clerk to remove the above-referenced docket entry from the central docket system.

The regulations governing appeals to the Administrator (49 CFR § 240.411) do not provide for direct appeals to the Administrator from decisions of the LERB, except in cases where the LERB denies petitions as being untimely. (See 49 CFR § 240.411(f) and 49 CFR § 240.403(e).) A review of the LERB's decision reveals that the LERB did not make a determination in the matter based upon timeliness.

I have only the authority to consider cases or to grant relief provided to me by the applicable regulations providing for appeals to the Administrator. In this matter, the applicable regulations do not provide for a direct appeal from the decision of the LERB, which you have sought. Therefore, I am without jurisdiction to consider the appeal you have filed on behalf of Mr. Grimes.

For the reasons stated above, I decline to consider the appeal in this matter, dated October 25, 2006.

Sincerely,

[original signed by]

Joseph H. Boardman
Administrator

ccs: Service List