

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

Locomotive Engineer Review Board

Review and Determinations Concerning  
CSX Transportation Company's  
Decision to Revoke Ms. A. Micskei's  
Locomotive Engineer Certification

**FRA Docket Number EQAL-2010-01**

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**Decision**

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of CSX Transportation (CSXT) to revoke the locomotive engineer certification (certification) of Ms. A. Micskei (Petitioner) in accordance with the provisions of Title 49, Part 240 of the Code of Federal Regulations (CFR). The Board hereby determines that CSXT's decision to revoke Petitioner's certification was improper for the reasons set forth below.

**Background**

On August 25, 2009, at approximately 2:25 a.m., while operating Assignment Y35024, in the vicinity of Hookers Point near Tampa, FL, Petitioner failed to stop short of an industrial gate. The collision resulted in an FRA reportable injury to the conductor, who was located on the leading end of the locomotive.

CSXT convened an investigation and hearing regarding the incident on September 10, 2009. Although it may have been unclear in the September 3, 2009 charge letter from CSXT, it was clarified at the hearing that Petitioner was suspended pending investigation under 49 C.F.R. § 240.117(e)(2). Tr. at 22. Subsequent to the hearing, in a letter dated October 6, 2009, CSXT revoked Petitioner's certification for a period of 30 days, from August 29, 2009, through September 27, 2009, pursuant to 49 CFR § 240.117(e).

Petitioner's timely petition appealing the revocation to the Board was dated January 11, 2010 and received by FRA on January 27, 2010. Petitioner alleged that she had not violated an operating rule that was permissible for CSXT to consider under 49 CFR § 240.117(e)(1)-(5) for the purpose of revoking her certificate, because CSXT did not identify which of the "cardinal sins" Petitioner allegedly violated, and at the time of the incident Petitioner had no range of vision and was relying on the conductor's hand signals.

### **CSXT's Response**

CSXT filed a response to the petition, dated May 6, 2010, and asserted that Petitioner was correctly charged. CSXT stated that the conductor was in clear view of Petitioner and gave the appropriate stop signal at approximately 75 feet from the gate, but that Petitioner failed to stop. Moreover, CSXT alleged that the conductor made several attempts to tell Petitioner to stop, including radio contact and flashing his lantern, but that Petitioner did not respond and failed to stop until the train was approximately 38 feet from the gate. CSXT claimed that Petitioner failed to pay attention to the conductor's hand signals and as a result was not able to stop the locomotive in time to avoid striking the gate and caused a reportable injury to the conductor. CSXT asserted that the revocation of Petitioner's certificate was appropriate under 49 C.F.R. § 240.117(e)(2).

### **Locomotive Engineer Review Board's Determination**

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

1. On August 25, 2009, at approximately 2:25 a.m., Petitioner was the engineer of locomotive Y35024.
2. The crew consisted of Petitioner and a conductor.
3. The locomotive was being operated long-hood forward and traversing a right-hand curve approaching an industry gate when the incident occurred. Tr. at 23, 90. Petitioner was not familiar with the territory and was unaware there was a gate at the industry. Tr. at 91, 105, 117. Petitioner's visibility was limited to looking at the conductor while rounding the curve, so the conductor was controlling the movement. Tr. at 32.
4. At a distance of approximately 588 feet from the gate, the conductor stopped to throw a derail and then directed Petitioner to back up by way of a hand signal with a lantern. Tr. at 43. The conductor was on the leading end of the movement, on the engineer's side of the locomotive, on the bottom step.
5. Petitioner did not exceed the maximum speed. Tr. at 24.
6. Radio traffic at the time of the incident prevented Petitioner and the conductor from effectively communicating over the radio. UTU Exhibit #2; Tr. at 89.
7. The conductor and Petitioner agree that after the conductor removed the derail, he mounted the locomotive and instructed Petitioner to back up using a hand signal with a lantern. The crew members agree that the conductor gave no signals between the backup signal with the lantern and the lantern signal to stop.
8. There is disagreement between the crew members as to when the conductor conveyed the lantern signal to stop. The conductor stated that he gave a stop signal with a lantern when the locomotive was approximately 75 feet from the gate. The conductor claims that he gave a

second signal to stop, then instructed Petitioner to “stop, stop, and stop” over the radio, and waved at Petitioner to stop. UTU Exhibit #2; Tr. at 90, 93. Petitioner claims the locomotive was fewer than 75 feet from the gate when the conductor gave the stop signal with the lantern. Tr. at 120. Petitioner stated that the conductor gave no signals between the backup signal with the lantern at the derail and the signal to stop at the gate. Tr. at 112, 113. Petitioner stated that she stopped the locomotive immediately when the conductor gave the hand signal to stop. Tr. at 112, 117, 119.

9. Petitioner was dependent on the conductor’s range of vision and complementary hand signals to operate the locomotive when the incident occurred. Tr. at 115, 116.
10. According to locomotive event recorder data, the locomotive was traveling at approximately 6 or 7 miles per hour when it was 75 feet from the gate. UTU Exhibit #3; Tr. at 27.
11. The road foreman testified that, given the speed at which the locomotive was traveling, the hand signal to stop that the conductor gave Petitioner 75 feet from the gate was not sufficient to stop the movement of the locomotive short of the gate. Tr. at 34.
12. Two other supervisors testified that the conductor gave the stop signal in sufficient time to stop the locomotive. Tr. at 45, 72. Given these supervisors’ lack of operational perspective, their opinions do not outweigh that of the road foreman.

### **Analysis of Petition**

In reviewing petitions of revocation decisions to determine whether revocation was proper under FRA regulations, the Board may consider whether “an intervening cause prevented or materially impaired the locomotive engineer’s ability to comply with the railroad operating rule or practice which constitutes a violation under § 240.117(e)(1) through (e)(5) of this part.” 49 C.F.R. § 240.307(i)(1). Here, there is no factual dispute over whether Petitioner applied the brakes too late to prevent the locomotive from striking the gate. The question is whether Petitioner appropriately relied on the conductor’s signals and whether the conductor’s signals were adequate for Petitioner to stop the locomotive without incident.

The conductor stated that he first gave a stop signal with a lantern approximately 75 feet from the gate. Tr. at 85, 90. The conductor did not give any testimony that he tried to slow the movement of the locomotive prior to approaching this point. Thus, it appears the conductor suddenly gave the engineer a stop signal with a lantern when 75 feet from the gate. The locomotive was traveling at a speed of approximately 6 or 7 miles per hour when it was 75 feet from the gate. UTU Exhibit #3; Tr. at 27. The road foreman testified that the stop signal was not given in time to stop short of the gate with the locomotive traveling at 6 mph. Tr. at 34. Regardless of whether Petitioner failed to respond immediately when the conductor first conveyed the hand signal, the record indicates that it was not possible for Petitioner to avoid striking the gate because of the conductor’s belated display of the hand signal to stop. Petitioner’s assertion that she did not violate an operating rule that permitted revocation of her certificate under 49 C.F.R. § 240.117(e)(1)-(5) is supported by the record because, at the time of the incident, Petitioner had no range of vision and was relying on the conductor’s hand signals.

**Conclusion**

For the foregoing reasons, the Board finds that CSXT's decision to revoke Petitioner's certification as a locomotive engineer was improper and hereby grants the petition in accordance with the provisions of 49 C.F.R. Part 240.

Issued in Chicago, IL on JAN 19 2011.



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Richard M. McCord  
Chairman,  
Locomotive Engineer Review Board

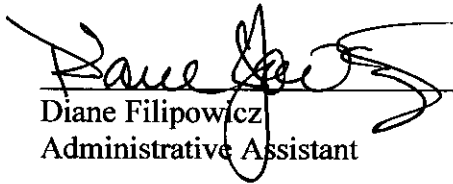
**SERVICE LIST EQAL 2010-01**

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

Ms. Andrea Micskei  
20111 Leonard Road  
Lutz, FL 33558

Mr. Ben C. Davis, Local Chairman  
United Transportation Union  
1736 Daiquiri Lane  
Lutz, FL 33549

Mr. Michael S. Burns  
CSX Transportation  
Law Department  
500 Water Street, J150  
Jacksonville, FL 32202

  
Diane Filipowicz  
Administrative Assistant

**JAN 19 2011**

Date

enc: Post LERB Memo

cc: FRA DOCKET EQAL 2010-01

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Ms. Andrea Micskei  
2011 Leonard Road  
Lutz, FL 33558

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1. Article Addressed to:

Mr. Ben C. Davis, Local Chairman  
United Transportation Union  
1736 Daiquiri Lane  
Lutz, FL 33549

EQAL 2010-01

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1. Article Addressed to:

Mr. Michael S. Burns  
CSX Transportation  
Law Department  
500 Water Street, J150  
Jacksonville, FL 32202

EQAL 2010-01

2. Article Number

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