

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

Locomotive Engineer Review Board

Decision Concerning
Metro-North Commuter Railroad's
Revocation of Mr. M. J. Martino's
Locomotive Engineer Certification

FRA Docket Number EQAL 2010-11

Decision

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed two decisions of the Metro-North Commuter Railroad (MNCR) to revoke the locomotive engineer certification (certification) of Mr. M. J. Martino (Petitioner) for three alleged violations in accordance with the provisions of Title 49, Part 240 of the Code of Federal Regulations (49 C.F.R. Part 240). The Board finds that there is substantial evidence to prove that Petitioner failed to perform a running brake test on August 3, 2009. However, there was not substantial evidence in the record to support the August 5, 2009 violation of 49 C.F.R. Part 238, although Petitioner may have violated MNCR's more stringent running brake test operating rule. Moreover, the Board has determined that regardless of MNCR's incorrect revocation determination for the August 5, 2009 incident, MNCR should have determined that all three incidents were part of a continuing investigation and therefore combined all three incidents into one revocation in order to comply with the intent of 49 C.F.R. Part 240 - instead of only combining the three incidents into two revocations. The Board hereby denies the petition with respect to the August 3, 2009 revocation, and grants the petition with respect to the August 5, 2009 revocation, for the reasons set forth below. Accordingly, Petitioner's certification should have been revoked for only a 30-day period.

Background

MNCR issued two separate revocations of Petitioner's certification in response to three alleged violations of 49 C.F.R. § 240.117(e)(3), which provides for revocation in response to an engineer's "[f]ailure to adhere to procedures for the safe use of train or engine brakes . . . when the procedures are required for compliance with the class I, class 1A, class II, or running brake test provisions of 49 C.F.R. part 238." Because the three alleged violations all involved the proper application of a running brake test and occurred within a three-day period, the Board has decided to address the three alleged violations and both revocation actions in one decision.

The First Incident: August 3, 2009

On August 3, 2009, Petitioner allegedly failed to follow procedures for the safe use of train or engine brakes by not immediately performing a running brake test upon departing Grand Central Terminal (GCT) on Track 24 at approximately 5:02 p.m. At the time of the event, Petitioner was operating train 1552, a commuter train from GCT, New York City to New Haven, Connecticut. There were nine cars in the consist for train 1552, with car 8438 at the lead and car 8813 at the end of the train. See Aug. 3 Tr. at 26. Petitioner was accompanied by an FRA inspector as he departed GCT. The FRA inspector believed Petitioner failed to perform a running brake test as he departed the terminal and reported the incident to MNCR.¹

Pursuant to the FRA inspector's report, on August 4, 2009, MNCR's system road foreman requested a download of event recorder data from car 8438, the lead car of train 1552. See Aug. 3 Tr. at 19-20, 28. On August 5, 2009, the system road foreman evaluated the event recorder data and determined that Petitioner first applied the brakes approximately two minutes after departing, when the train was traveling at 11.5 miles per hour (mph). See Aug. 3 Tr. at 29-30; Ex. J. The system road foreman concluded that Petitioner failed to perform a running brake test immediately upon departing GCT in violation of MNCR rules and Federal regulations.

The Second Incident: August 3, 2009

Continuing his review of the event recorder data for car 8438, the system road foreman determined that Petitioner also failed to perform a running brake test during the same tour of duty on August 3, 2009, while operating train 1103. Train 1103 was the return train of 1552 and the same nine-car consist as train 1552, with car 8813 in the lead and car 8438 at the rear of the train. It departed New Haven at approximately 6:40 p.m. on August 3, 2009. See Aug. 3 Tr. at 51. The event recorder data for car 8438 showed that Petitioner first applied the brakes to train 1103 when the train was traveling at 76.5 mph. See Aug. 3 Tr. at 51, 55; Ex. P.

The Third Incident: August 5, 2009

After reviewing the event recorder data for the August 3, 2009 events on August 5, 2009, the system road foreman continued his investigation that day by reviewing event recorder data from a train Petitioner operated earlier that day. See Aug. 5 Tr. at 9-10, 20. The system road foreman determined that on August 5, 2009, Petitioner again failed to adhere to procedures for the safe use of train or engine brakes by not immediately performing a running brake test. This time, the alleged incident occurred upon departing CP 223 (Rye) at approximately 9:36 a.m. while operating train 1241. Train 1241 was a nine-car consist running from CP 223 to GCT. See Aug. 5 Tr. at 10, 13. An event recorder download was taken for car 8470, the second car from the lead. See Aug. 5 Tr. Ex. F, G. Upon review of the event recorder data for car 8470, the system road foreman determined that Petitioner applied the brakes 1.5 minutes after leaving CP 223 when the train was traveling at 32.5 mph. See Aug. 5 Tr. at 17. At that time, Petitioner was removed from service. See Aug. 5 Tr. at 20.

¹ The FRA inspector did not request that a violation of § 238.319 be pursued against MNCR, but did cite MNCR for a defect of MNCR operating rule 105-D(1). See Aug. 3 Tr. Ex. H.

MNCR notified Petitioner that his certification had been suspended by a Notification of Certificate Suspension dated August 7, 2009. Subsequent to two formal investigation hearings held on August 21, 2009, Petitioner's certification was revoked for 30 days as a result of the August 3, 2009 events, and for a period of six months as a result of the August 5, 2009 event, via letter dated August 22, 2009.²

Petitioner appealed both revocation charges against him to the Board in correspondence dated March 30, 2010, approximately 220 days after the August 22, 2009 revocation letters. Petitioner asserts that he did not receive the notices of certification revocation from MNCR, and in fact did not receive notice of certification revocation until January 19, 2010, when he received a waiver conference letter from his General Chairman. See Pet. at 1. Petitioner states that he was previously not aware of his right to appeal the revocations to this Board. MNCR asserts that it notified Petitioner of the revocations of his certification on August 22, 2009. See MNCR Resp. at 1. However, MNCR did not provide certified mail receipts to document either the mailing or the receipt of the notices. Under these circumstances, the Board has determined that Petitioner did not receive constructive notice of the revocations until January 19, 2010. As the petition was filed within the required 120-day period of constructive notification, the Board considered the petition to be timely filed.

Although Petitioner requested review of both revocation decisions with a single petition, and the Board reviewed all three alleged violations together, each revocation decision must be considered independently. Based on the reasons set forth below, the Board has decided to deny the petition with respect to the first, 30-day revocation, and to grant the petition with respect to the second, six-month revocation. Thus, Petitioner's certification should have been revoked for 30 days.

Petitioner's Assertions

Petitioner asserts that MNCR's decisions to revoke his certification were improper for the following reasons:

1. MNCR failed to follow proper procedures in revoking Petitioner's engineer certification because it did not notify Petitioner of the revocation and his right to appeal via certified mail. See Pet. at 1.

² The Board notes that 49 C.F.R. § 240.117(g)(3)(iii) provides "[i]n the case of three separate incidents involving violations of one or more of the operating rules or practices, described in paragraphs (e)(1) through (e)(6) of this section, that occurred within 36 months of each other, the person shall have his or her certificate revoked for a period of one year." However, MNCR asserts that it treated the two incidents on August 3, 2009, as one revocable offense, pursuant to FRA's published guidance that allows a railroad to combine incidents, if supported by time, distance or circumstance. See MNCR Order Resp. at 2; OP-04-16, Technical Resolution Committee: Part 240: Wrecking Operations; Multiple Decertification Events During Same Duty Tour, Feb. 3, 2004.

2. Regarding the first incident, Petitioner complied with the requirement to perform a running brake test for train 1552 on August 3, 2009, because the train speed was below the required 15-mph speed and the train was within the limits of GCT when he applied the brakes. See Aug. 3 Tr. at 35-36. MNCR's insistence that the test be performed immediately upon leaving the platform is improper. See Aug. 3 Tr. at 106.
3. Regarding the second incident, Petitioner performed a running brake test on train 1103 on August 3, 2009. The only event recorder data that was downloaded was from the east car farthest from his point of operation westbound instead of the entire consist. See Aug. 3 Tr. at 92. The single car download is inconsistent and inaccurate in that it did not show the running brake test he performed when traveling at 10 mph. Also, the downloaded event recorder data was insufficiently scrutinized. See Pet. at 2.
4. Regarding the third incident, Petitioner performed a running brake test after departing CP 223 operating train 1241 as he cleared the turnaround point just west of the break when he was traveling at a restricted speed of approximately 10 or 12 mph. See Aug. 5 Tr. at 34-35, 39.
5. Regarding the third incident, Petitioner performed a running brake test on train 1241 on August 5, 2009, when he arrived at CP 223 at 9:24 a.m. Before entering CP 223, he changed ends from train 1040, turned into train 1241, performed a Class II brake test, pulled to the signal and stopped, which was a running brake test. Data prior to 9:36 a.m. was not included in the download and therefore the download data did not include the test. See Pet. at 2.

MNCR's Response

Pursuant to 49 C.F.R. § 240.405(b) and (c), a copy of the petition was sent to MNCR, which was afforded an opportunity to comment. On June 16, 2010, MNCR responded to Petitioner's assertions, arguing that:

1. Petitioner was notified of the revocations of his certification on August 22, 2009, and Petitioner's claim that he was unaware of the revocations is without merit. See MNCR Resp. at 1-2. Petitioner was removed from service on August 5, 2009, and dismissed on August 27, 2009. See id. at 2.
2. The evidence presented at the company investigation shows that Petitioner failed to comply with Rule 105-D of MNCR Equipment Operating Instructions (MN-401) which requires that a running brake test be performed on "all trains immediately after departing any terminal or turnaround point." MNCR Resp. at 1. Petitioner failed to comply with Rule 105-D on August 3, 2009, departing GCT and New Haven Station, and on August 5, 2009, when departing the turnaround point at CP 223. See MNCR Resp. at 1.

Board's Determinations

On December 2, 2010, the Board issued an interim order requesting that MNCR submit additional information to clarify how MNCR interprets and trains its engineers on its running

brake test rule, Rule 105-D. Both MNCR and Petitioner submitted additional information in response to the Board's order.

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

1. On August 3, 2009, while operating train 1552, Petitioner departed GCT at approximately 5:01:53 p.m. Approximately two minutes later, at 5:03:56 p.m., Petitioner first applied the brakes to train 1552, when the train was traveling at 11.5 mph. See Aug. 3 Tr. at 29-30; Ex. J. While Petitioner was operating train 1552 on August 3, 2009, it traveled approximately 1400 feet from the time it departed the station to the time the Petitioner first applied the brakes. See Aug. 3 Tr. at 31. Petitioner testified that he customarily performs a running brake test once a train is operating at about 10 mph. See Aug. 3 Tr. at 79, 82-83. He testified that he performed a running brake test while operating train 1552 departing GCT on August 3, 2009, when the train speed reached 10 mph. See Aug. 3 Tr. at 83. The MNCR system road foreman testified that a delay of two minutes before applying the brakes is not consistent with the immediacy requirement of Rule 105-D. See Aug. 3 Tr. at 36-38.
2. On August 3, 2009, while operating train 1103 in a deadhead, non-revenue status without passengers on board, Petitioner departed New Haven, CT at approximately 6:40:57 p.m. Approximately five minutes after departing New Haven, at 6:46:39 p.m., Petitioner first applied the brakes to train 1103, when the train was traveling at 76.5 mph. See Aug. 3 Tr. at 51, 55; Ex. P. The MNCR system road foreman testified that applying the brakes five minutes after departing when the train was moving at approximately 76 mph was not in compliance with the running brake test requirement. See Aug. 3 Tr. at 60. The MNCR system road foreman presented evidence that the event recorder for car 8438 of trains 1552 and 1103 was calibrated and in compliance with all required inspections. See Aug. 3 Tr. at 95-96.
3. On August 5, 2009, Petitioner was operating train 1241 as it departed from CP 223 heading to GCT at approximately 9:36 a.m. See Aug. 5 Tr. at 9-10, 14, and 16. Petitioner alleges that he performed a running brake test after completing a proper Class II brake test prior to departing CP 223. See Pet. at 2. Had Petitioner performed the running brake test as he alleged, he would be in compliance with 49 C.F.R. Part 238, but the locomotive event recorder download did not prove or disprove whether the running brake test was performed. Approximately 1.5 minutes later, at 9:37:41 a.m., Petitioner applied the brakes to train 1241 when the train was traveling at a speed of 32.5 mph. See Aug. 5 Tr. at 14, 16; Ex. G. The MNCR system road foreman testified that the operation of train 1241 on August 5, 2009, was not consistent with immediately performing a running brake test, raising safety concerns and demonstrating a pattern of Petitioner not performing a running brake test while operating a train. See Aug. 5 Tr. at 16-17. The MNCR system road foreman presented evidence that the event recorder for car 8470 of train 1241 was in compliance with all required inspections. See Aug. 5 Tr. at 21, 45; Ex. I, J.

Analysis of Petition

Procedural Issue

Petitioner's first assertion raises a procedural issue. Petitioner alleges that the revocation was improper because MNCR failed to follow proper notification procedures in revoking his certification. See Pet at 1. When considering procedural disputes, the Board will "determine whether substantial harm was caused the petitioner by virtue of the failure to adhere to the dictated procedures for making the railroad's decision. A finding of substantial harm is grounds for reversing the railroad's decision." 58 Fed. Reg. 18982, 19001 (Apr. 9, 1993). To establish grounds upon which the Board may grant relief, Petitioner must show: (1) that procedural error occurred, and (2) the procedural error caused substantial harm. Id.

As the Board considered the petition to be timely filed, Petitioner was not substantially harmed by MNCR's alleged procedural error.

Factual Issues

Petitioner also raises questions of fact. First, Petitioner alleges that the event recorder data from car 8438 is inconsistent, inaccurate, and should have been taken from another car on train 1552 and 1103 on August 3, 2009. Second, Petitioner alleges that he did perform a running brake test after leaving CP 223 on August 5, 2009, but that the event recorder did not capture that data. Third, Petitioner alleges that the data taken from car 8470 is incomplete because it does not include his actions prior to 9:36 a.m. on August 5, 2009. When considering factual disputes, the Board will determine whether there is substantial evidence to support the railroad's decision, and a negative finding is grounds for reversal. See 58 Fed. Reg. 18982, 19001 (Apr. 9, 1993).

1. First Factual Issue

Petitioner's third allegation, that the event recorder data from car 8438 is inconsistent, inaccurate, and should have been taken from another car on train 1103 on August 3, 2009, is contradicted by the evidence presented. The MNCR system road foreman offered evidence that the event recorder for car 8438 was calibrated and in compliance with all required inspections. See Aug. 3 Tr. at 95-96. Moreover, the system road foreman testified that data regarding speed and brakes is available from any data event recorder in any car in the train. See Aug. 3 Tr. at 64. Petitioner offered no countervailing evidence to rebut that aspect of the system road foreman's testimony. The Board finds that substantial evidence supports MNCR's factual findings regarding the times that Petitioner applied the brakes on August 3, 2009.

2. Second Factual Issue

Petitioner's fourth assertion, that he performed a running brake test on train 1241 on August 5, 2009, after departing the turnaround point CP 223 while running at restricted speed at approximately 10 or 12 mph, is not supported by the record. The MNCR system road foreman presented evidence that the event recorder for car 8470 was in compliance with all required inspections. See Aug. 5 Tr. at 21, 45; Ex. I, J. Petitioner presented no witnesses and no evidence, other than his own testimony, to rebut the testimony and evidence of the system road foreman.

3. Third Factual Issue

Petitioner's fifth allegation, that the data taken from car 8470 is incomplete because it does not include his actions prior to 9:36 a.m. on August 5, 2009, is persuasive. While MNCR Operating Rule 105-D required Petitioner to perform a running brake test "immediately after departing any terminal or turnaround point," MNCR's rule is more restrictive than the Federal regulation upon which certification decisions are based. See MNCR Resp. at 1; § 240.117(e)(3); § 238.319. The Federal regulation states "[a]s soon as conditions safely permit, a running brake test shall be performed on each passenger train after the train has received, or was required under this part to have received, either a Class I, Class IA, or Class II, brake test." § 238.319(a). While MNCR is permitted to adopt and enforce additional or more stringent requirements not inconsistent with 49 C.F.R. Part 240, MNCR is not permitted to revoke an engineer's certification based on those additional or more stringent requirements. See 49 C.F.R. §§ 240.1(b), 240.117(e) and (e)(3) (requiring that a railroad shall only consider violations of running brake test procedures when they are required by the running brake test provisions of 49 C.F.R. Part 238).³

The event recorder data in the record shows that Petitioner began operating train 1241 westward, away from CP 223 at 9:36 a.m. See Aug. 5 Tr. at 14, 16; Ex. G. Prior to operating train 1241, Petitioner operated train 1040 eastward toward CP 223. Petitioner was required by 49 C.F.R. Part 238 to perform a Class II brake test after switching ends on the train. Furthermore, § 238.319 required that Petitioner perform a running brake test after performing a Class II brake test, as soon as conditions safely permit. See Aug. 5 Tr. at 29. Petitioner argues that he in fact performed a running brake test when he arrived at 9:24 a.m. at CP 223, changed ends and pulled up to the stop signal. See Pet. at 2. MNCR did not provide the locomotive event recorder data from Petitioner's train 1040, which may have demonstrated that Petitioner performed a running brake test in accordance with § 238.319. See Pet. at 2; Aug. 5 Tr. at 29, 31. The Board agrees with and acknowledges Petitioner's assertion that MNCR was focused on proving that Petitioner violated MNCR's own running brake test rule that has a more stringent requirement than

³ Furthermore, the preamble to the Part 240 Notice of Proposed Rulemaking, 63 Fed. Reg. 50626, 50640 (Sept. 22, 1998), states:

The proposed change to paragraph (e) is an attempt to resolve confusion that might surface between the interplay of this section and § 240.1(b). According to § 240.1(b), this part prescribes minimum Federal safety requirements and does not restrict a railroad from implementing additional or more stringent requirements for its locomotive engineers that are not inconsistent with this part. It is possible that a railroad could interpret that section to permit them to revoke a person's certificate for misconduct events more stringent than articulated by rule. FRA wants to be clear that we do not hold that same interpretation and the Working Group wants FRA to clarify this issue by amending the regulation. By adding the word "only," the proposed paragraph (e) reads that "[a] railroad shall only consider violations of its operating rules and practices that involve * * *" Thus, the proposed regulation would limit the revocable events to only those listed in § 240.117(e).

§ 238.319. The missing event recorder data was likely to demonstrate that Petitioner had complied with Federal regulations. Accordingly, the Board finds that MNCR has not provided substantial evidence that Petitioner failed to perform a running brake test as required by Part 240 on August 5, 2009.⁴

Legal Issues

Petitioner also raises a question of law. The Board considers whether the railroad's legal interpretations are correct based on a de novo review. See 58 Fed. Reg. 18982, 19001 (Apr. 9, 1993). Petitioner asserts that MNCR's insistence that a running brake test be performed "immediately" upon leaving the platform is improper. See Aug. 3 Tr. at 106.

Rule 105-D of MNCR Equipment Operating Instructions (MN-401) requires that a running brake test be performed on "all trains *immediately* after departing any terminal or turnaround point." See MNCR Resp. at 1 (italicized emphasis added). However, as described above, there is a distinction between a railroad's operating rules and Federal requirements for revocation purposes. While § 240.1(b) permits a railroad to have additional or more stringent requirements not inconsistent with Part 240, §§ 240.117(e) and (e)(3) demonstrate that a railroad can only revoke an engineer's certification for failing to perform running brake test procedures pursuant to Part 238. See §§ 240.1(b), 240.117(e), and 240.117(e)(3). Thus, MNCR may not revoke an engineer's certification based solely on a railroad-specific operating rule, such as MNCR Rule 105-D, that requires that such a running brake test be performed "immediately after departing any terminal or turnaround point," whereas Federal requirements only require a running brake test be performed after a Class I, Class IA, or Class II, brake test (see § 238.319(a)), or under other circumstances that do not apply here. See § 238.319(b). Thus, the ambiguity surrounding the meaning of "immediate" in MNCR's more restrictive operating rule is of secondary concern to the question of whether a running brake test was performed as required by § 238.319.

As the Board has already determined that the record lacks substantial evidence to support the third incident, we will focus on the first two incidents. The Board does find that the record supports the railroad's determination that Petitioner committed a running brake test violation for the second incident, as there is substantial evidence that the first brake application did not occur until the train was traveling at 76.5 mph. In the second incident, after switching ends from train 1552 at New Haven to operate return train 1103, Petitioner was required to perform a Class II brake test pursuant to Part 238. See Aug. 3 Tr. at 68, and § 238.317(a). A running brake test must be performed "as soon as conditions safely permit" following a Class II brake test. See § 238.319. No reasonable interpretation of the running brake test requirements—a test to verify that the train's brake system is functioning—could countenance performing the test at such a speed here, as being "as soon as conditions safely permit." § 238.319.

⁴ The Board notes that even if MNCR had provided the locomotive event recorder data prior to 9:36 a.m., and if MNCR had demonstrated a violation of § 238.319, the six-month revocation period with respect to the August 5, 2009 incident would still be improper, as the alleged violation should have been combined with the August 3, 2009 incidents. See discussion below regarding the legal issue, "Violations as Part of a Continuing Investigation."

The Board reviewed the record to determine whether Petitioner performed a Class I or Class II brake test prior to the first incident on August 3, 2009 - which would necessitate a running brake test pursuant to § 238.319. The record was insufficient in addressing this point. However, as MNCR had already combined both incidents on August 3rd into one revocation decision, and there was substantial evidence that Petitioner failed to perform a running brake test during the second incident on that day, the issue is moot.

Violations as Part of a Continuing Investigation

Regardless of the proof problems involving the first and third incidents, the Board finds that MNCR should have only decided to revoke Petitioner's certification once due to a separate, overriding legal issue: whether the three running brake test incidents in this case should have been combined together as a single revocable event under Part 240. Petitioner was charged with two alleged failures to perform a running brake test during a single tour of duty, on August 3, 2009. Petitioner was separately charged for a similar violation occurring during a separate tour of duty but merely two days after the August 3rd incidents. Petitioner was not notified regarding any of the alleged running brake test violations until after the locomotive event recorder data for both days was reviewed by the system road foreman and Petitioner was removed from service. The system road foreman testified that he only examined the event recorder data for the August 5th incident, in furtherance of his investigation into the alleged running brake test violations on August 3, to see if Petitioner had demonstrated a pattern of non-compliance with the running brake test requirements. See Aug. 3 Tr. at 18-20, 42; Aug. 5 Tr. at 9-10, 20. The system road foreman stated "[d]uring the course of the investigation when I was analyzing the event recorder data from the first train that the FRA noted, I continued my investigation and included 1103 which was the train he had on the first date and did another download to see if a pattern developed." Aug. 5 Tr. at 9. The system road foreman testified "[a]fter I analyzed the event recorder data from 1552 and 1103 . . . I saw 1241 was arrived in GCT . . . I called GCT mechanical and asked them to download that train." Aug. 5 Tr. at 20. Further, the system road foreman stated that "I would have removed [Petitioner] prior to looking at 1241 if I wasn't concerned about [an] unsafe pattern being developed here." Aug. 3 Tr. at 42. This testimony clearly demonstrates that the three alleged violations were part of a continuing investigation.

Given the progressive nature of revocation periods as specified in Part 240 and the fact that the three alleged violations were part of a continuing investigation into a pattern of non-compliance with running brake test requirements, MNCR should have treated all three incidents as a single revocable event. See § 240.117(f)(1); MNCR Order Resp. at 2; OP-04-16, Technical Resolution Committee: Part 240: Wrecking Operations; Multiple Decertification Events During Same Duty Tour, Feb. 3, 2004. Otherwise, multiple revocations imposed for three alleged violations, similar in time, distance, and circumstance, without any notification to Petitioner of the allegations between the violations, would lead to an application of the regulation that was not intended by FRA. Under these particular facts, the Board finds that MNCR should have considered these three incidents together as one revocable event.⁵

⁵ The Board notes that Part 240 and Collective Bargaining Agreement (CBA) review processes are distinct. Thus, even though Petitioner's case has already been reviewed pursuant to the applicable CBA, the Board's review process is independent of that decision. See § 240.5(d).

Conclusion

For the foregoing reasons, and with the qualifications noted in this decision, the Board finds that MNCR's decision to revoke Petitioner's certification for 30 days for failing to perform a running brake test on August 3, 2009 under the provisions of 49 C.F.R. Part 240 is supported by substantial evidence. However, there was not substantial evidence in the record to support the August 5, 2009 violation of 49 C.F.R. Part 238, although Petitioner may have violated MNCR's more stringent running brake test operating rule. Moreover, the Board has determined that regardless of MNCR's incorrect revocation determination for the August 5, 2009 incident, MNCR should have determined that all three incidents were part of a continuing investigation and therefore combined all three incidents into one revocation in order to comply with the intent of 49 C.F.R. Part 240 - instead of only combining the three incidents into two revocations. Based on its review of the record, the Board hereby denies the petition with respect to the August 3, 2009 revocation, but grants the petition with respect to the August 5, 2009 revocation, in accordance with the provisions of 49 C.F.R. Part 240. Accordingly, Petitioner's certification should have been revoked for only a 30-day period.

Issued in Chicago, IL on MAY 09 2011 .



Richard M. McCord
Chairman,
Locomotive Engineer Review Board

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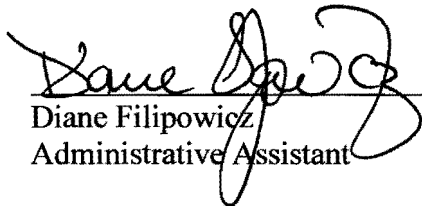
A copy of the Locomotive Engineer Review Board decision in this matter has been sent by certified mail and return receipt requested to each person shown below.

SENT CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. M. J. Martino
363 Contour Drive
Cheshire, CT 06410

Mr. Michael Doyle
General Chairman
ACRE Local Division 9
420 Lexington Avenue, Suite 215
New York, NY 10017

Mr. Andrew Paul
Director, Labor Relations
Metro North Railroad
345 Madison Avenue, 14th Floor
New York, NY 10017



Diane Filipowicz
Administrative Assistant

MAY 09 2011

Date

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cc: FRA DOCKET EQAL 2010-11

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