

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

Locomotive Engineer Review Board

Decision Concerning
Canadian National Railway Company's
Revocation of Mr. S. W. Strader's
Locomotive Engineer Certification

FRA Docket Number EQAL 2010-12

Decision

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of the Canadian National Railway Company (CN) to revoke Mr. S. W. Strader's (Petitioner) locomotive engineer certification (certification) 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 grants the petition for the reasons set forth below.

Background

On February 4, 2010, at approximately 11:15 a.m., while operating Train M39731-03, Petitioner allegedly passed a stop signal without authority at milepost (MP) 43.02, on the Chicago Subdivision. See Tr. at 7, 30; Pet. Ex. 2.

CN charged Petitioner with a violation of 49 C.F.R. § 240.117(e)(1) – “failure to control a locomotive or train in accordance with a signal indication . . . that requires a complete stop before passing it.” An investigation and hearing was held on February 10, 2010, and CN notified Petitioner of the revocation by letter dated February 19, 2010.

Petitioner's Assertion

The Brotherhood of Locomotive Engineers and Trainmen (BLET) filed a petition with FRA on behalf of Petitioner, requesting that the Board review CN's decision to revoke Petitioner's certification. The petition was received on April 5, 2010 and was timely filed. The petition asserts that the revocation was improper because:

Petitioner was caused substantial harm in this incident because the investigating officer (Mr. Handley) issued the final revocation decision in violation of 49 C.F.R. § 240.307(c)(10) and (e). See Pet. at 4, 5.

CN's Response

Pursuant to 49 C.F.R. § 240.405(b), (c), a copy of the petition was sent to CN on May 3, 2010, and the railroad was afforded an opportunity to comment. CN responded to Petitioner's assertions by letter dated May 11, 2010, as follows:

“Notices of Revocation are not issued without the authorization of the Senior Supervisor Locomotive Engineers or a Certification Program Administrator first reviewing the hearing transcript. A Supervisor of Locomotive Engineer[s] [(SLE)], in this case[,] Chris Handley, does not have the authority to revoke an engineer's certificate. A [SLE] does have [the] authority to deliver the Notice of Revocation, in which case the SLE will sign and date the notice. In [Petitioner's] case, SLE Handley was a witness and not the investigating officer; Doyle Cowles was the investigating officer.” CN Resp. at 1.

Board's Determinations

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

- (1) On February 4, 2010, at approximately 11:15 a.m., while operating Train M39731-03, Petitioner passed a stop signal without authority at MP 43.02, on the Chicago Subdivision. See Tr. at 7, 30; Pet. Ex. 2.
- (2) SLE Handley issued a Notification of Certification Suspension to Petitioner dated February 4, 2010. See Pet. Ex. 1.
- (3) SLE Handley participated in the combined hearing as a Carrier witness, testifying as to his investigation of the incident at the time of occurrence. See Pet. at 3, 5; Tr. at 2, 5, 21-24, 66, 76, 91, 197. Mr. Cowles served as the hearing officer. See Tr. at 1, 5-6, 13-14.
- (4) The decision letter, without any mention of Petitioner's certification status, was issued over Superintendent Michael Monsour's signature on February 18, 2010. See Pet. Ex. 3.
- (5) SLE Handley signed the Notification of Certificate Revocation dated February 19, 2010. See Pet. Ex. 2.

Analysis of the Petition

Petitioner's assertion involves a procedural issue. Petitioner argues that because the revocation decision was signed by the investigative officer, there was procedural error. See Pet. at 4. Petitioner further alleges that this procedural error caused him substantial harm, as the procedures required by § 240.307 are mandatory, and the investigating officer should not serve “as the judge, jury, and executioner.” See Pet. at 5. 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.

The Board finds that Petitioner’s assertion has merit. However, the provisions of 49 C.F.R. § 240.307(c)(10) do not apply. The items listed under § 240.307(c) would only apply if the hearing was being held specifically under the procedures outlined under paragraph (c). The hearing in this case was a combined hearing. See Tr. Ex. 1. Therefore, 49 C.F.R. § 240.307(e) would apply, stating: “[a] hearing required under this section may be consolidated with any disciplinary or other hearing arising from the same facts, but in all instances a railroad official, other than the investigating officer, shall make separate findings as to the revocation required under this section.” (Emphasis added).

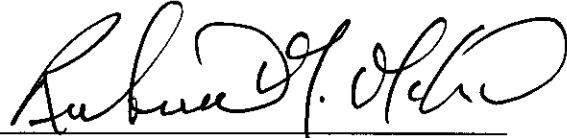
While it appears that CN’s explanation of the procedures may be correct, the Board finds that the evidence does not support CN’s argument. A review of the hearing transcript indicates that SLE Handley did in fact investigate this incident. SLE Handley was dispatched to the scene, he downloaded the locomotive event recorder, and he interviewed Petitioner. See Tr. at 22-23, 26, 29, 31, 64. Following the hearing, the decision letter was issued over Superintendent Michael Monsour’s signature. See Pet. Ex. 3. However, the letter fails to mention anything about Petitioner’s certification status. See id. Absent any other documentation, Petitioner is left with the revocation notice signed and issued by SLE Handley. See Pet. Ex. 2. Thus, it appears as if the investigating officer has issued a revocation decision.

The Board has had cases in the past where the investigating SLE may have signed a revocation notice as described by CN in this case. However, in those cases, a decision letter was also issued that clearly indicated that someone other than the investigating officer issued the decision, having made separate findings. The evidence presented in the petition indicates that the investigating officer issued the revocation decision. This constitutes procedural error which has caused Petitioner substantial harm.

Conclusion

Based on its review of the record and the above findings, the Board hereby grants the petition in accordance with the provisions of 49 C.F.R. Part 240.

Issued in Chicago, IL on MAR 03 2011.

A handwritten signature in black ink, appearing to read "Richard M. McCord", written over a horizontal line.

Richard M. McCord
Chairman,
Locomotive Engineer Review Board

SERVICE LIST EQAL 2010-12

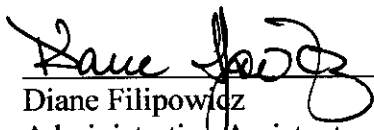
A copy of the Locomotive Engineer Review Board decision in this matter has been sent by certified mail and return receipt requested to each person shown below.

SENT CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. S.W. Strader
205 East Raymond
Danville, IL 61832

Mr. J.R. Koonce
General Chairman, BLE&T
General Committee of Adjustment
5909 Shelby Oaks Drive, Suite #139
Memphis, TN 38134-7318

Mr. Kevin Brockman (c/o Alicia Cesta)
Senior Supervisor of Locomotive Engineers
Canadian National Railway/MIT
16800 South Center Street
Harvey, IL 60426



Diane Filipowicz
Administrative Assistant

MAR 03 2011

Date

enc: Post LERB Memo

cc: FRA DOCKET EQAL 2010-12

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. 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. 	A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee X	
	B. Received by (Printed Name)	C. Date of Delivery
1. Article Addressed to:	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
Mr. Kevin Brockman (c/o Alicia Cesta) Senior Supervisor of Locomotive Engineers Canadian National Railway/MIT 16800 South Center Street Harvey, IL 60426		
	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Transfer from service label)	7008 3230 0002 3925 8501	
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540		

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	B. Received by (Printed Name)	C. Date of Delivery
1. Article Addressed to:	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
Mr. J.R. Koonce General Chairman, BLE&T General Committee of Adjustment 5909 Shelby Oaks Drive, Suite #139 Memphis, TN 38134-7318		
	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Transfer from service label)	7008 3230 0002 3925 8518	
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540		

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	B. Received by (Printed Name)	C. Date of Delivery
1. Article Addressed to:	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
Mr. S.W. Strader 205 East Raymond Danville, IL 61832		
	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Transfer from service label)	7008 3230 0002 3925 8525	
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540		

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