

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

Locomotive Engineer Review Board

Review and Determinations Concerning  
Union Pacific Railroad Company's  
Decision to Revoke Mr. T. J. Hamilton's  
Locomotive Engineer Certification

**FRA Docket No. EQAL 2010-13**

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**Decision**

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of the Union Pacific Railroad Company (UP) to revoke Mr. T. J. Hamilton'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 has determined that UP's decision to revoke Petitioner's certification was proper under 49 C.F.R. Part 240, and therefore denies the petition for the reasons set forth below.

**Background**

On November 6, 2009, at approximately 12:25 p.m., Petitioner was operating UP train CCRWE-06 westbound at Elmhurst, IL on the Geneva Subdivision. Petitioner allegedly operated the train through Form B working limits beginning at milepost (MP) 16.7 without receiving permission to enter the working limits from the foreman in charge. After an investigation, Petitioner was removed from service.

By letter November 13, 2009, Petitioner was notified that his certification had been suspended for occupying main track without authority in violation of 49 C.F.R. § 240.117(e)(4). A combined railroad discipline and Federal certification hearing was held by UP on November 19, 2009, and continued on November 30, 2009. By letter dated December 8, 2009, Petitioner was notified that his certification had been revoked. Petitioner timely filed a petition dated April 5, 2010, requesting FRA review of UP's decision. The petition asserted the revocation was improper for the following reasons:

- 1) Petitioner was substantially harmed because the hearing officer prejudged his guilt, was argumentative, and held pertinent evidentiary materials until the morning of the decertification hearing without allowing Petitioner or his representative to review them. Petitioner also asserts an investigation was previously held on this incident on the date the alleged violation occurred;

- 2) Petitioner was substantially harmed during the hearing because UP failed to have the foreman who allegedly gave Petitioner's train permission into Form B working limits present to testify at the hearing;
- 3) Petitioner had participated in a job briefing with his train's conductor establishing that the conductor would obtain permission via radio through Form B limits for the train. When the incident occurred, Petitioner was occupied performing functions to operate the train and only heard portions of the conductor's conversation with the foreman. This was an intervening cause that prevented Petitioner from complying with applicable railroad operating rules and excused the alleged violation via 49 C.F.R. § 240.307(i)(1);
- 4) There was no property damage and no one was injured as a result of this incident, which are mitigating circumstances which need to be evaluated under 49 C.F.R. § 240.307(i)(2) in making a decertification decision.

Pursuant to 49 C.F.R. §§ 240.405(b) and (c), a copy of the petition was sent to UP on May 3, 2009, and UP was afforded an opportunity to comment. UP timely responded to the petition on July 6, 2009, and sent a copy of its response to Petitioner in accordance with 49 C.F.R. § 240.405(d)(2). UP responded to Petitioner's assertions by arguing that:

- 1) The investigation into the incident on the date it occurred was merely an informal field investigation into the events that had occurred, and was not a disciplinary or decertification hearing. Further, Petitioner was given ample time to review evidentiary materials, as the hearing was recessed to allow Petitioner and his representative time to review the materials;
- 2) Petitioner was aware of the correct process for requesting witnesses at the hearing and failed to comply with those processes. Further, the testimony of the foreman was irrelevant, as the foreman Petitioner requested to testify was not the foreman in charge of the Form B limits Petitioner was alleged to have operated his train through without permission;
- 3) The testimony at the hearing indicated Petitioner heard a foreman give his train permission to operate through Form B working limits, but did not know which Form B location that foreman was referring to. The fact that Petitioner was performing other duties involved in the operation of his train at the time of the alleged violation did not preclude him from verifying he had authority to operate through the appropriate Form B limits;
- 4) There were no relevant mitigating circumstances in this instance as Petitioner's alleged violation could have resulted in a catastrophic accident had his train come into contact with the maintenance of way gang present inside the Form B working limits.

### **Board's Determinations**

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

- 1) On November 6, 2009, Petitioner was operating train CCRWE-06 at Elmhurst, IL on the Geneva Subdivision. Transcript at 150-51; Exhibit A1;

- 2) Petitioner initially boarded the train at Wolf Road, or approximately MP 13.7, and was operating it westbound toward MP 16.7. Transcript at 37-46, 149-152; Exhibit A;
- 3) On the date of the incident, Form B No. 54216 (the "Form B") was in effect and was in Petitioner's possession. Exhibit D; Transcript at 53-54, 151. Line 6 of the Form B established there were working limits between MP 16.7 and MP 17.1, under the supervision of Foreman Lange. Exhibit D;
- 4) Instead of contacting Foreman Lange as Petitioner's train traveled west toward the working limits beginning at MP 16.7, Petitioner's conductor contacted a Foreman King via radio for permission through the limits of *Line 3* of the Form B, which governed working limits between MP 7 and MP 10, an area actually several miles behind (east of) Petitioner's train as it traveled westbound. Transcript at 84-91, 130; Exhibit F;
- 5) A Foreman Mendoza responded for Foreman King and gave Petitioner's train permission to travel through the working limits between MP's 7 and 10 established by Line 3 of the Form B. Transcript at 88-91; Exhibit F;
- 6) Neither Petitioner nor his conductor ever obtained permission through the working limits established by Line 6 of the Form B beginning at MP 16.7. Transcript at 130, 141-144; Exhibit F;
- 7) Foreman Lange observed Petitioner's westbound train west of MP 16.7 traveling on the main track within his working limits. Transcript at 63-64. Not having granted permission for Petitioner's train to occupy the main track within the limits established by Line 6 of the Form B, Foreman Lange challenged Petitioner's train via radio. Id; Transcript at 91-93; Exhibit F. After being challenged by Foreman Lange, Petitioner's conductor requested permission to occupy the working limits. Transcript at 92; Exhibit F;
- 8) A UP command center was then informed that Petitioner's train had committed a Form B violation. Transcript at 47;
- 9) Petitioner was required to stop his train, and he was removed from service after an investigation. Transcript at 157-158; Exhibit A1. On November 13, 2008, Petitioner's certificate was suspended for occupying main track without authority in violation of 49 C.F.R. § 240.117(e)(4). Exhibit A1;
- 10) A combined railroad discipline and Federal certification hearing was held on November 19, 2009, continuing on November 30, 2009. See transcript. Petitioner was notified his certification was revoked on December 8, 2009. See petition;
- 11) Petitioner timely filed a petition appealing UP's revocation decision, asserting the above arguments.<sup>1</sup> See petition;

- 12) During the hearing, Foreman Lange testified that neither Petitioner nor his conductor obtained permission for their train to enter his working limits, which were established by Line 6 the Form B in effect on that date of the incident. Transcript at 63-69, 130; Exhibit D;
- 13) The dispatch transcripts on the date of the incident show that Petitioner's conductor called for permission through Line 3 of the Form B, which governed working limits several miles behind Petitioner's train. Transcript at 83-102; Exhibits D, F. The transcripts indicate that Petitioner's train did not contact Foreman Lange for permission before entering his working limits at MP 16.7. Id;
- 14) Petitioner and the conductor both testified that they held job briefings in which it was determined the conductor would be responsible for contacting the appropriate foreman for permission through the Form B working limits in effect on the date of the incident. Transcript 151-154, 165-166. Petitioner testified that he did not hear all of the radio conversation between his conductor and Foreman Mendoza on the date of the incident because he was attending to other duties while operating the train. Transcript at 154. Petitioner also testified that although he did hear his conductor talk to Foreman Lange via radio, he could not recall at what location his train was at when the crew actually received permission to travel through the working limits established by Line 6 of the Form B. Transcript at 155-156;
- 15) The Board finds that the record in this case indicates Petitioner did not have permission to operate his train into the working limits established by Line 6 of the Form B, and therefore occupied main track without authority;
- 16) The Board finds no intervening cause materially impaired Petitioner's ability to comply with the applicable operating rules. As the locomotive engineer of the train, Petitioner was prohibited from operating his train through applicable Form B limits until receiving permission from the employee in charge, Foreman Lange. Exhibits C, D. Further, Petitioner was located in the cab of the locomotive with the conductor when the relevant radio communications discussed above transpired and had job briefed regarding the Form B working limits with his conductor and also had the relevant Form B in his possession. Transcript at 149-156;
- 17) The Board finds Petitioner was not substantially harmed during the hearing when Foreman Mendoza was not present to testify. Foreman Mendoza did not have responsibility for the working limits through which Petitioner passed without permission. Exhibit D. The working limits Foreman Mendoza granted Petitioner's train permission to travel through were several miles in the opposite direction from Petitioner's westbound train. Transcript at 83-102; Exhibits D, F. Petitioner's conductor clearly called for permission through the wrong Form B working limits. Id. Thus, no procedural error occurred.

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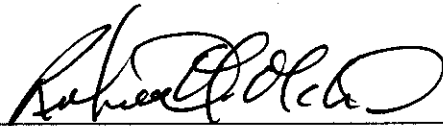
<sup>1</sup>UP alleged in its response that the petition was not valid as it was submitted 31 days after the 120-day deadline to submit petitions after a decertification decision. However, UP appears to have miscalculated the deadline for the petition, as the petition was postmarked April 5, 2010, or 118 days after UP's decertification decision.

- 18) The Board finds that Petitioner's assertion that a hearing or "investigation" had previously been held regarding this incident is without merit. The record indicates the investigation conducted on the date of the accident was a routine incident investigation to gather facts, a practice that is common in the railroad industry. Transcript at 131-138, 139-140. The investigation conducted on the date of the incident was clearly not a decertification hearing as prescribed by 49 C.F.R. Part 240, or a disciplinary hearing. Thus, no procedural error occurred;
- 19) The Board finds Petitioner's assertion that he was denied the chance to review relevant evidentiary materials prior to the hearing is also without merit. The hearing was postponed for 11 days after it initially began in order for Petitioner and his representative to review these materials. Transcript at 20-27. Further, a review of the record does not indicate there is any evidence that UP prejudged Petitioner's guilt as to the violation or denied Petitioner a fair hearing. See transcript. Thus, no procedural error occurred;

### **Conclusion**

Based on the above determinations, the Board finds UP presented substantial evidence to support its decertification decision. The petition is denied in accordance with the provisions of Title 49, Part 240 of the Code of Federal Regulations.

Issued in Chicago, IL on DEC 02 2010.



Richard M. McCord  
Chairman,  
Locomotive Engineer Review Board

**SERVICE LIST EQAL 2010-13**

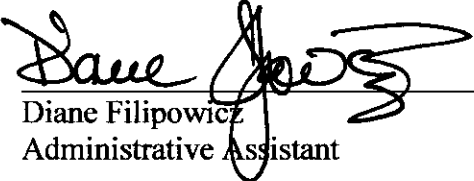
A copy of the Locomotive Engineer Review Board decision in this matter has been sent by certified mail to each person shown below.

Mr. T. J. Hamilton  
1467 Wayne Drive  
Crete, IL 60417-2870

Mr. R.E. Crow  
Local Chairman  
BLE&T Division 404  
P.O. Box 403  
Warrenville, IL 50036-60555

Mr. Lawrence Brennan, Jr.  
Manager, Engineer Certification & Licensing  
Union Pacific Railroad Company  
1400 Douglas Street, Mailstop 1010  
Omaha, NE 68179

Ms. Christine Hampton  
Union Pacific Railroad Company  
1400 Douglas Street, Mailstop 1030  
Omaha, NE 68179

  
\_\_\_\_\_  
Diane Filipowicz  
Administrative Assistant

**DEC 02 2010**  
\_\_\_\_\_  
Date

cc: FRA Docket EQAL 2010-13

## SENDER: COMPLETE THIS SECTION

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- 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.

1. Article Addressed to:

Ms. Christine Hampton  
 Union Pacific Railroad Company  
 1400 Douglas Street, Mailstop 1030  
 Omaha, NE 68179

EQAL 2010-13

2. Article Number  
(Transfer from service label)

7008 3230 0002 3925 3605

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

## COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

 Agent Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type

 Certified Mail  Express Mail Registered  Return Receipt for Merchandise Insured Mail  C.O.D.

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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Lawrence Brennan, Jr.  
 Manager, Engineer Certification & Licensing  
 Union Pacific Railroad Company  
 1400 Douglas Street, Mailstop 1010  
 Omaha, NE 68179

EQAL 2010-13

2. Article Number  
(Transfer from service label)

7008 3230 0002 3925 3612

PS Form 3811, February 2004

Domestic Return Receipt

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 Agent Addressee

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C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
r delivery address below:  No

3. Service Type

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4. Restricted Delivery? (Extra Fee)

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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. R.E. Crow  
 Local Chairman  
 BLE&T Division 404  
 P.O. Box 403  
 Warrenville, IL 50036-60555

EQAL 2010-13

2. Article Number  
(Transfer from service label)

7008 3230 0002 3925 3629

PS Form 3811, February 2004

Domestic Return Receipt

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 Agent Addressee

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C. Date of Delivery

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If YES, enter delivery address below:  No

3. Service Type

 Certified Mail  Express Mail Registered  Return Receipt for Merchandise Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)

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1. Article Addressed to:

Mr. T. J. Hamilton  
1467 Wayne Drive  
Crete, IL 60417-2870

**EQAL 2010-13**

2. Article Number  
(Transfer from service label)

7008 3230 0002 3925 3636

PS Form 3811, February 2004

Domestic Return Receipt

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A. Signature

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- Agent  
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type

- Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes