

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

Locomotive Engineer Review Board

Decision Concerning  
CSX Transportation, Inc.'s  
Revocation of Mr. W. B. Howard's  
Locomotive Engineer Certification

**FRA Docket Number EQAL 2010-14**

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**Decision**

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of CSX Transportation, Inc. (CSX) to revoke Mr. W. B. Howard's (Petitioner) locomotive engineer certification (certification) for 30 days 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 denies Mr. Howard's petition for the reasons set forth below.

**Background**

By letter dated January 27, 2010, CSX notified Petitioner that his certification was suspended pending possible revocation for "occup[ying] and mov[ing] within a siding and occup[ying] and mov[ing] on the main track with a locomotive consist without proper authority of the train dispatcher, and all circumstances relating thereto." The letter also notified Petitioner that an investigative hearing would be held with respect to the matter on February 4, 2010.

By letter dated February 2, 2010, CSX notified Petitioner that two individuals would be added as witnesses at the investigative hearing. By email dated February 2, 2010, Petitioner's representative requested the presence of a witness at the hearing and documentation related to the investigative hearing.

An investigative hearing was held on February 4, 2010. By letter dated March 4, 2010, CSX notified Petitioner that his certification had been revoked for 30 days pursuant to 49 CFR Part 240.117(e)(4) for occupying main track without proper authority in violation of CSX Operating Rule ("Rule") 161.

Petitioner filed a petition for review ("Petition") which was received by FRA on April 15, 2010. The Petition asserts that Petitioner did not occupy the main track without authority. According to Petitioner, he and Conductor C. P. Caddell were part of Coal Train U13313 they had been called to assist. Since the coal train's conductor had received authority to occupy the main track at issue, Petitioner was also authorized to occupy the main track. The Petition further asserts that the movement which resulted in Petitioner's revocation was normal practice at the location.

According to Petitioner, pusher locomotives, such as the one operated by Petitioner, have always been operated under the track authority of the train they are assisting.

Pursuant to 49 C.F.R. § 240.405(b) and (c), FRA sent a copy of the Petition to CSX, which was afforded an opportunity to comment. CSX responded to the Petition by letter dated June 30, 2010. CSX asserts that Petitioner incorrectly believed that he was part of the coal train crew and could use their authority to occupy the main track. According to CSX, Petitioner's crew was separate from the coal train's crew and thus, petitioner was required to receive authority from the train dispatcher before occupying the main track. CSX further asserts that even though Petitioner argues that he was following normal practice, Rule 161 clearly states that a train may not enter main track without permission from the train dispatcher.

### **Board's Determinations**

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

- (1) On January 20, 2010, Petitioner and Conductor C. P. Caddell (the pusher crew) were instructed to deadhead from Loyal, Kentucky to Pennington, VA, where they would pick up pusher locomotives on the House Track to assist Coal Train U13313, which was in the siding. Petition at 2; Transcript at 79.
- (2) The crew of Coal Train U13313 (coal train crew), which was operating in Direct Traffic Control (DTC) - Track Warrant Control (TWC) territory, had received absolute authority to occupy the Big Stone DTC Block of main track (Block), the Pennington siding, and the switch at the south end of the siding. Petition at 2; Transcript at 82-83.
- (3) The pusher crew and the coal train crew performed a job briefing. At about 3:50 p.m., Petitioner operated the pusher locomotives out of the House track through the south end of the siding onto main track at the north end of the Block. The coal train conductor then boarded the pusher locomotives and rode them to the north end of the coal train to release handbrakes and to arm an end-of-train device. Petition at 2.
- (4) Neither Petitioner nor his conductor had called the dispatcher for permission to occupy main track. Transcript at 80-81, 86-89.
- (5) The train dispatcher was unaware that the pusher crew's train was occupying main track. Transcript at 57.
- (6) Rule 161 states:

161. Occupying Track Warrant Territory

Trains must not enter the main track in TWC territory unless authorized to do so by the train dispatcher, or as a work train as prescribed by Operating Rule 89.

\* \* \* \* \*

## 2. Crew Responsibilities

### a. Occupying TWC Territory

- (1) A train must not occupy TWC territory without,
  - (a) DTC Block Form in DTC TWC territory or
  - (b) Form EC-1DCS TWC Territory.
- (2) Any crewmember may secure the authority when directed by, and under the direct supervision of, the conductor or engineer.
- (2) Once a movement authority is in effect, no alteration may be made other than those specifically prescribed by train dispatcher.

Transcript Ex. Carrier #6.

- (7) Rule 166 states:

### 166. Assisting a Standing Train

#### 1. Train Dispatcher Responsibilities

The train dispatcher may permit an engine to enter the authority of a standing train. The assisting engine will not be granted authority to enter the limits. However, the train dispatcher will make a record of the occurrence. This may be done only after the train dispatcher,

- a. Issues Form EC-1 preventing standing train from moving, and
- b. Knows that a clear understanding exists between both crews, as to the location of the standing train.

#### 2. Crew of Standing Train Responsibilities

A crewmember of the standing train must provide warning against the assisting engine as prescribed by Rule 70.

### 3. Crew of Assisting Engine Responsibilities

The assisting engine will stop ¼ mile from the standing train and approach the location of the standing train at Restricted Speed.

Before the assisting engine detaches from the train and makes a movement within the same limits the crew must obtain a TWC authority. In 251 territory permission of the train dispatcher must be obtained to operate with the current of traffic.

Transcript Ex. Carrier #7.

#### **Analysis of the Petition**

Petitioner's assertion that he was authorized to occupy main track presents a factual issue. "When considering factual issues, the Board will determine whether there is substantial evidence to support the railroad's decision, and a negative finding is grounds for dismissal." 58 Fed. Reg. 18982, 19001 (April 9, 1993).

CSX has provided substantial evidence to support its revocation decision that Petitioner was not authorized to occupy main track. Petitioner's pusher locomotives were in a different location than the coal train and were not part of the coal train. Rather, the pusher locomotives operated by Petitioner were called to assist the coal train. Pursuant to Rules 161 and 166, Petitioner was required to obtain permission from the dispatcher before entering main track, which Petitioner admits he did not do. Thus, Petitioner's argument that he was authorized to occupy main track in the Block based on the coal train crew's authority cannot be sustained.

The Board understands Petitioner's assertion that his actions were consistent with the long time practice at Pennington to be an intervening cause argument. In determining whether decertification was proper under FRA's regulations, the Board considers 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).

Although Petitioner provides evidence of what he believes the standard practice to be at Pennington, VA, the Board does not find the evidence to be sufficient. Petitioner's evidence consists of testimony provided by Petitioner, his conductor, and the coal train crew. However, the crewmembers' testimony not only lacks specificity that this was an accepted practice, but the testimony also does not address Rule 166's requirement that an assisting engine must obtain permission to enter the authority of a standing train. Thus, Petitioner's evidence is insufficient proof of a defense.

For example, the coal train's engineer, who provided the most specific testimony and the strongest statement in support of the alleged standard practice at Pennington, VA, stated that "[t]he only thing I can tell you, you can go back—I would say you go back, I'd say you could go back at least a

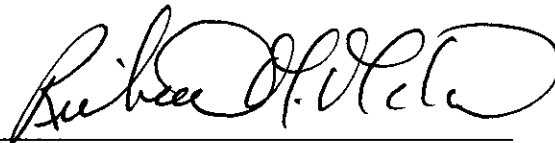
year and to my knowledge there hasn't been a—not an EC-1 form, in fact, I was told once by a Dispatcher that he was instructed the pusher was part of our crew \* \* \* and governed accordingly.”<sup>1</sup> Transcript at 71. Likewise, the testimony of the coal train's conductor lacked specificity. The coal train's conductor testified that the coal train crew and the pusher crew normally work “like a single crew” and that he “always considered” the pusher crew to be part of his crew and thus he was not granting authority to a separate train but rather granting authority to a member of his crew. See Transcript at 75-78. In contrast, Dispatcher J. D. Mariotti, who was the dispatcher during the pusher crew's movement onto main track, simply testified that the pusher crew needed his permission to occupy the main track in accordance with Rule 166. See Transcript at 58-59.

As the record fails to contain sufficient evidence to support a finding that there was an accepted practice of disregarding Rules 161 and 166, the Board must find that Petitioner's intervening cause argument is unsustainable.

### **Conclusion**

For the foregoing reasons, the Board finds that CSX's decision to revoke Petitioner's certification under the provisions of 49 C.F.R. Part 240 is supported by substantial evidence. Based on its review of the record, the Board hereby denies the petition in accordance with the provisions of 49 C.F.R. Part 240.

Issued in Chicago, IL on DEC 16 2010.



Richard M. McCord  
Chairman,  
Locomotive Engineer Review Board

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<sup>1</sup> The asterisks in the quote are intended to note that the testimony was interrupted. They do not indicate that words were removed from the quote.


**SERVICE LIST EQAL 2010-14**

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.

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**DEC 16 2010**  
\_\_\_\_\_  
Date

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