

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

**Locomotive Engineer Review Board**

Decision Concerning  
Union Pacific Railroad Company's  
Revocation of Mr. A. L. Patrick's  
Locomotive Engineer Certification

**FRA Docket Number EQAL 2010-16**

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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. A. L. Patrick'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 denies the petition for the reasons set forth below.

**Background**

On December 6, 2009, at approximately 10:02 p.m., while operating Assignment MFWEW-06, Petitioner allegedly exceeded the maximum authorized speed by more than 10 miles per hour (mph) near milepost (MP) 30.4 on the Midlothian Subdivision near Mansfield, Texas. See Tr. at 23-25; Pet. at 2; Resp. at 1.

UP charged Petitioner with a violation of 49 C.F.R. § 240.117(e)(2) – “failure to adhere to limitations concerning train speed when the speed at which the train was operated exceeds the maximum authorized limit by at least 10 miles per hour.” An investigation and hearing was held on January 6, 2010, and UP notified Petitioner of the decertification by letter dated January 15, 2010.

**Petitioner's Assertions**

The Brotherhood of Locomotive Engineers and Trainmen (BLET) filed a petition with FRA on behalf of Petitioner, requesting that the Board review UP's decision to revoke Petitioner's certification. The petition was received on May 3, 2010 and was timely. The petition asserts that the revocation was improper because:

- (1) There were mitigating circumstances for the speeding violation. Petitioner was forced to operate the locomotive consist from the south end as it traveled northward back to the train. The locomotive was equipped with a “North American” style cab, necessitating Petitioner's use of the rearview mirror during

the move, thereby limiting his visibility. Petitioner was required to operate the locomotive backward at night under misty and foggy conditions which contributed to a very short speed violation which was immediately corrected.

- (2) During the 50 minute trip back to his train, Petitioner only exceeded the maximum speed by more than 10 mph for 30 seconds before he took corrective action to bring the speed down. Such a brief indiscretion, even if substantiated, should not rise to the level of decertification.
- (3) The locomotive event recorder data may not have been correct. The witness who downloaded the data did not know when either the north or south locomotive was last inspected, when either locomotive's event recorder was last calibrated, or whether or not the locomotive consist had come out of the Fort Worth servicing area prior to Petitioner taking charge of it. Because the speed indicator was not shown to be calibrated, it could have been off by plus or minus 5 mph, which would not have resulted in a de-certifiable speed violation.

### **UP's Response**

Pursuant to 49 C.F.R. § 240.405(b), (c), a copy of the petition was sent to UP on May 3, 2010, and the railroad was afforded an opportunity to comment. UP responded to Petitioner's assertions by letter dated July 8, 2010, as follows:

- (1) Petitioner was required by the rules (UP Rule 31.4) to immediately report any non-complying issues or defects to the train dispatcher. The conversation entered into the record does not indicate Petitioner did this. Petitioner also did not state that he notified the mechanical forces of any problems.
- (2) Petitioner was responsible for ensuring his locomotives were given a daily inspection. The rules also require that he test his speed recorder when he departed his initial terminal at Fort Worth, Texas.

### **Board's Determinations**

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

- (1) The train crew consisted of Petitioner and a conductor. The crew was operating southbound from Fort Worth, Texas, to Hearne, Texas, when the incident occurred. See Pet. at 2; Resp. at 1.
- (2) The crew was instructed to cut away from their train to assist a stalled grain train ahead on Gisco Hill. See Tr. at 24. The crew separated their two-locomotive consist from their train on the main track at "Bisbee" and proceeded to the stalled train. Id. After assisting the train, the crew received permission from the dispatcher to make the reverse movement from MP 25 back to their train. Id.

- (3) Because of a defective brake valve, Petitioner remained on the south locomotive of the consist as they proceeded northward. See Pet. at 2-3. The conductor was located in the north locomotive providing protection. See Tr. at 25. The crew failed to stop short of their train, colliding with it and causing a derailment. See Resp. at 2; Tr. Ex. K at 3.
- (4) The maximum authorized speed for a light locomotive consist “controlled from other than the leading unit” is 30 mph. See Tr. Ex. E (UP Rule Item 2-A: Maximum Speeds: General); Tr. at 79. The method of operation on the Midlothian Subdivision is Track Warrant Control/Automatic Block Signal (TWC/ABS). See Resp. at 2. The crew testified that they received the following signal indications approaching their train: Advance Approach, Approach, and Proceed Restricting. See id. Due to the derailment investigation, a download of the locomotive event recorder was obtained. The data indicated that Petitioner’s speed reached approximately 43 mph near MP 30.4 during his return to the train. See Tr. at 77; Tr. Ex. L and N.

### **Analysis of the Petition**

Petitioner’s first assertion involves an intervening cause. Petitioner argues that mitigating circumstances render UP’s decertification decision improper. See Pet. at 2. Petitioner claims that his visibility was reduced because he was operating backwards at night under misty and foggy conditions on the locomotive and the “North American” style cab required him to use the rearview mirror during the move. Petitioner further asserts that such reduced visibility caused a very short speed violation which was immediately corrected. 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).

The Board finds that Petitioner’s first assertion is without merit. UP Operating Rule 6.31: Maximum Authorized Speed, states that “[c]onductors and engineers are jointly responsible for knowing and not exceeding the maximum authorized speed for their train.” Tr. at 26; Tr. Ex. D. Maximum speed is defined for “[a] multiple-unit engine controlled from other than the leading unit” to be 30 mph. See Tr. at 27; Tr. Ex. E (UP Item 2-A: Maximum Speeds: General, Part 11). Thus, because Petitioner’s locomotive was controlled from other than the leading unit, Petitioner was required to operate not exceeding 30 mph. See Tr. at 79.

Under the circumstances described, Petitioner would not have any trouble monitoring his speed while operating backwards. Petitioner testified that he was facing forward, looking back using the rearview mirror. See Tr. at 110. As he was facing forward, he would have had an easy view of the speed indicator. If Petitioner had any problems in operating in the “North American” cab or relying on his rearview mirror, he was required by UP Rule 31.4 to notify the dispatcher. See Pet. at 2; Resp. at 2; see also Tr. at 26; Tr. Ex. D (UP Rule 6.31: Maximum Authorized Speed,

mandating that “[w]hen possible, crew members must notify the train dispatcher promptly of any condition that will delay or prevent their train from making the usual speed.”). Petitioner did not notify the dispatcher of any issues that would have a potential to affect the safe operation of his train. Moreover, the conductor stated in a post-incident interview with the charging officer that “I kept telling [Petitioner] to slow down. But he didn’t do what I was telling him to do.” Tr. Ex. K at 4. If anything, Petitioner’s “mitigating factors” support an argument to maintain a lower overall speed to account for the weather and difficulty in operating the train while using the mirror, rather than justify Petitioner’s speeding.

The Board also finds Petitioner’s second argument to be without merit. “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 reversal.” 58 Fed. Reg. 18982, 19001 (Apr. 9, 1993). Substantial evidence was presented at the hearing proving that Petitioner operated the train in excess of 10 mph of the maximum authorized speed of 30 mph. See, e.g., Tr. at 77; Tr. Ex. L and N. Indeed, Petitioner admits that he was speeding. See Tr. at 109-10. While Petitioner argues that the train was only more than 10 mph above the 30 mph speed limit for a few seconds, Petitioner should not have been operating at 43 mph for any portion of the trip back to the train. See Tr. at 77, 109-10, 119-20; Tr. Ex. L, N, O; Pet. at 4. There is no minimum duration requirement to fail to adhere to a speed limit for decertification purposes.<sup>1</sup> See Tr. at 79, 119-20; Tr. Ex. L and M; 49 C.F.R. § 240.117(e)(2); Pet. at 4. As such, UP’s assessment that Petitioner exceeded the maximum authorized speed by 10 mph is reasonable.

Petitioner’s third assertion, that the speed indicator could have been incorrect by plus or minus 5 mph, which would not have resulted in a de-certifiable speed violation, also lacks merit. Petitioner argues that UP failed to provide any evidence that the event recorder was properly calibrated. See Pet. at 4; Tr. at 87-88. However, Petitioner offers no evidence denying the speeding violation or testimony to suggest that his speed recorder was inaccurate. Petitioner is required by UP operating rules to inspect his locomotive consist. See Resp. at 3 (citing to UP Rule 31.2). Additionally, Petitioner was required to inspect his speed indicator after departing his initial terminal. See id. (citing to UP Rule 31.11 and 31.11.1). In sum, Petitioner was obligated to test his equipment according to UP operating rules and offered no evidence to show that the speed indicators were inaccurate.

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<sup>1</sup> Petitioner also argued that he lacked the intent to speed, however, intent to operate above the maximum speed limit is not a required element of decertification under 49 C.F.R. § 240.117(e)(2). See Pet. at 4.

**Conclusion**

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

Issued in Chicago, IL on NOV 10 2010.

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 2010-16**

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.

Mr. Adrian L. Patrick  
11208 Pleasantwood Lane  
Fort Worth, TX 76140-6538

Mr. Warren Dent  
General Chairman  
BLE&T, Southern Region  
1448 MacArthur Avenue  
Harvey, LA 70058

Mr. Lawrence Brennan, Jr.  
Manager, Engineering 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 1010  
Omaha, NE 68179-1010

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

**NOV 10 2010**

\_\_\_\_\_  
Date

enc: Post LERB Memo

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Ms. Christine Hampton Union Pacific Railroad Company 1400 Douglas Street, Mailstop 1010 Omaha, NE 68179-1010		
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Mr. Lawrence Brennan, Jr. Manager, Engineering Certification & Licensing Union Pacific Railroad Company 1400 Douglas Street, Mailstop 1010 Omaha, NE 68179		
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Mr. Warren Dent General Chairman BLE&T, Southern Region 1448 MacArthur Avenue Harvey, LA 70058		
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**EQAL 2010-16**

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- Addressee

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