

**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. R. E. Poole's
Locomotive Engineer Certification

FRA Docket Number EQAL 2010-17

Decision

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of Union Pacific Railroad Company (UP) to revoke Mr. R. E. Poole'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 determines that UP's decision to revoke Petitioner's certification was improper for the reasons set forth below.

Background

On December 27, 2009, at approximately 1:10 p.m., while working job AEGLI-26, Petitioner allegedly passed a stop signal without authority on the Beaumont Subdivision. *See* Tr. Ex. 1. The crew was immediately removed from service pending an investigation of the incident. *See* Tr. Ex. 8.

UP charged Petitioner with a violation of 49 C.F.R. § 240.117(e)(1), for "[f]ailure to control a locomotive or train in accordance with a signal indication, excluding a hand or a radio signal indication or a switch, that requires a complete stop before passing it." *See id.*

A combined railroad discipline and Federal certification hearing was conducted on January 21, 2010, and Petitioner was notified that his certificate was revoked by letter dated January 29, 2010. By petition and letter dated April 28, 2010, and received by FRA on May 3, 2010, Petitioner requested that FRA review UP's decision to revoke his certification. The petition asserts that the revocation was improper because UP failed to provide substantial evidence that the signal he passed was displaying a stop indication. Petitioner asserts that the only evidence provided by UP at the hearing was the Computer Assisted Dispatching (CAD) Report. This report records and shows the action of the dispatch, but does not record the actual signal system operations in the field. The report showed that the dispatcher did not request the signal, but it

does not show what the actual signal indication was in the field. Petitioner submits it was a lunar aspect.

Pursuant to 49 C.F.R. § 240.405(b) and ©, a copy of the petition was sent to UP. UP elected to comment and was required by 49 C.F.R. § 240.405(d)(2) to provide Petitioner with a copy of the materials submitted to FRA.

UP's Response

UP submits that the CAD system indicated that the signal was at “stop,” and asserts that the picture (from the camera on the lead locomotive) presented as evidence supports that position, as it shows the top signal head at “stop” and the lower signal head dark. *See* UP Resp. at 1. Further, UP asserts that UP Rule 9.4 (“Improperly Displayed Signals or Absent Lights”), requires the train crew to treat a dark signal or a signal that is absent a light where there should be a light to be treated as its most restrictive indication; in this case, Petitioner should have treated it as a “stop” indication. *See id.* at 1-2. Finally, even assuming that the signal was displaying a restricting (*i.e.*, lunar) indication, as Petitioner contends, this signal would have required Petitioner to stop within one half the range of vision short of an improperly lined switch; Petitioner was unable to stop short of the switch as required. *See id.* at 2.

Board's Determination

Based on its review of all of the information submitted, the Board has determined that:

- (1) On December 27, 2009, at approximately 1:10 p.m., while working job AEGLI-26, Petitioner allegedly passed a stop signal without authority on the Beaumont Subdivision. *See* Tr. at 5; Tr. Ex. 1. The crew was immediately removed from service pending an investigation of the incident. *See* Tr. Ex. 8.
- (2) UP charged Petitioner with a violation of 49 C.F.R. § 240.117(e)(1), for “[f]ailure to control a locomotive or train in accordance with a signal indication, excluding a hand or a radio signal indication or a switch, that requires a complete stop before passing it.” *See id.*
- (3) A combined railroad discipline and Federal certification hearing was conducted on January 21.
- (4) UP's Manager of Road Operations, B.J. Taylor, testified that the picture from the camera of the lead locomotive of AEGLI-26 shows that “the top mast and the bottom mast appear to be dark.” *See* Tr. at 15, 18 Tr. Ex. 10. He further testified that if the signal was dark, then that is a signal to stop, per UP Block System Rule 9.4. *See* Tr. at 19-21.

- (5) UP's Manager of Signal Maintenance, Brad Dickey, testified that where the CAD report says AEGLI-26 passed red signal," that means that "there was no call for the signal. There was no request for the signal to be cleared" and that "[t]he signal should've - - it was or should've been at stop." *See id.* at 80, 91, 100; Tr. Ex. 9.
- (6) UP's Manager Event Recorder Center, M. E. Pollan, testified that he believed that the signal indication in the black-and-white photo (a snapshot from the camera on the locomotive) was dark. *See* Tr. at 65, 67, 73-75, 77; Tr. Ex. 16. He further explained that he is able to determine the signal indication based on which light of the head is lit, acknowledging that he is unable to determine the signal indication from a black-and-white photo of a single-light head signal. *See* Tr. at 73; Tr. Ex. 16.
- (7) Conductor J.C. Kyles testified that the crew came upon a "low lunar signal, red and lunar." *See* Tr. at 26. The exhibit of the photo was marked to show which part of the signal was red (the top aspect) and which part of the signal was lunar (the area between the top aspect and the bottom aspect). *See id.* at 27-28; Tr. Ex. 10. He further testified that he called out a low lunar signal aspect to Petitioner and entered it in his conductor log as such, noting that Petitioner could not see it at first, because there were trees in his way, but that after getting around the tree limbs, Petitioner could see it and called it back to him. *See* Tr. at 32.
- (8) Petitioner testified that when Conductor Kyles first called out a low lunar, he could see it and acknowledged it, and that when Conductor Kyles called out a low lunar again approximately one mile later, he acknowledged it. *See* Tr. at 105. He further testified that he couldn't see it (the second time) because of the overhang from the trees in front of the signal that are about a half mile, but he glanced up and saw a low lunar. *See id.*
- (9) Petitioner was notified that his certificate was revoked by letter dated January 29, 2010.

Analysis of the Petition

Petitioner's assertion involves a substantive factual issue. Petitioner argues that he did not pass a stop signal without authority, as he asserts that the signal in question was displaying a "Low Lunar or Restricting" aspect. *See* Pet. at 2. When considering such 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." *See* 58 Fed. Reg. 18982, 19001 (April 9, 1993).

The Board finds that Petitioner's assertion has merit. The CAD report does not record the signal system's operation (vital logic) in the field, and the black-and-white photos do not provide sufficient evidence of the indication of the signal heads. The Board notes that there was no

evidence presented at the hearing that indicated the signal system was ever inspected in the field. A proper field inspection of the signal system would have revealed whether the signal heads were dark or dimly lit. Moreover, since the crew reported that they had received a positive signal, the incident should have been treated as a “false clear” signal report and the signal system should have been investigated in the field; however, there was no evidence presented that a false proceed report was filed.

Additionally, the Board finds that UP’s argument that a restricting indication would have required Petitioner to stop within one half the range of vision short of an improperly lined switch is without merit, as Petitioner was not charged with such a violation. Rather, UP charged Petitioner with a violation of 49 C.F.R. § 240.117(e)(1), for “[f]ailure to control a locomotive or train in accordance with a signal indication, excluding a hand or a radio signal indication or a switch, that requires a complete stop before passing it” (emphasis added). See Tr. Ex. 8.

UP failed to provide substantial evidence that a stop signal violation occurred while the signal system was functioning properly. UP based its case entirely on a CAD Report. The Board has found in the past that a CAD report alone does not provide substantial evidence that a signal system was functioning properly.

Conclusion

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

JAN 27 2011

Issued in Chicago, IL on _____.



Richard M. McCord
Chairman,
Locomotive Engineer Review Board

SERVICE LIST EQAL 2010-17

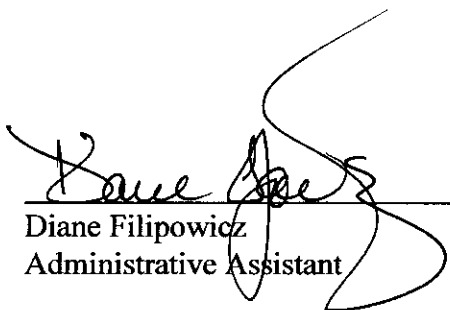
A copy of the Locomotive Engineer Review Board decision in this matter has been sent by certified mail and return receipt requested to each person shown below.

Mr. Raymond E. Poole
21311 Rosehill Church Road
Tomball, TX 77377

Mr. Russell Elley
Vice General Chairman
BLE&T, Southern Region
1448 MacArthur Avenue
Harvey, LA 70058-2454

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 1030
Omaha, NE 68179-1030



Diane Filipowicz
Administrative Assistant

JAN 27 2011

Date

enc: Post LERB Memo

cc: FRA DOCKET EQAL 2010-17

SENDER: COMPLETE THIS SECTION

- 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.

1. Article Addressed to:

Mr. Raymond E. Poole
21311 Rosehill Church Road
Tomball, TX 77377

2. Article Number
(Transfer from service label)

PS Form 3811, February 2004

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.

4. Restricted Delivery? (Extra Fee) Yes

EGAL 2010-17

7008 3230 0002 3925 8693

Domestic Return Receipt 102595-02-M-1540

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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.

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Mr. Russell Elley
Vice General Chairman
BLE&T, Southern Region
1448 MacArthur Avenue
Harvey, LA 70058-2454

2. Article Number
(Transfer from service label)

PS Form 3811, February 2004

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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.

4. Restricted Delivery? (Extra Fee) Yes

EGAL 2010-17

7008 3230 0002 3925 3162

Domestic Return Receipt 102595-02-M-1540

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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, Engineering Certification & Licensing
Union Pacific Railroad Company
1400 Douglas Street, Mailstop 1010
Omaha, NE 68179

2. Article Number
(Transfer from service label)

PS Form 3811, February 2004

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.

4. Restricted Delivery? (Extra Fee) Yes

EGAL 2010-17

7008 3230 0002 3925 8686

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<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 X <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to:	B. Received by (<i>Printed Name</i>)	C. Date of Delivery
Ms. Christine Hampton Union Pacific Railroad Company 1400 Douglas Street, Mailstop 1030 Omaha, NE 68179-1030	D. Is delivery address different from item 1? <input type="checkbox"/> Yes if YES, enter delivery address below: <input type="checkbox"/> No	
	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.	
2. Article Number <i>(Transfer from service label)</i>	4. Restricted Delivery? (<i>Extra Fee</i>) <input type="checkbox"/> Yes EQAL 2010-17 7008 3230 0002 3925 8679	