

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

Locomotive Engineer Review Board

Decision Concerning
Norfolk Southern Corporation's
Revocation of Mr. V. G. Falconer's
Locomotive Engineer Certification

FRA Docket No. EQAL-2010-18

Decision

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of Norfolk Southern Corporation (NS) to revoke Mr. V. G. Falconer'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 NS's decision to revoke Mr. Falconer's certification was proper for the reasons set forth below.

Background

On November 4, 2009, between the hours of approximately 3:53 a.m. and 3:57 a.m., while operating Train 255L504, Petitioner allegedly exceeded the maximum authorized speed between mile post (MP) D30.6 and MP D33.3, at Whitaker Interlocking, MI, in violation of 49 C.F.R. 240.117(e)(2).

By letter dated November 6, 2009, NS notified Petitioner that it was conducting a hearing on November 24, 2009 to consider whether Petitioner's certification should be revoked for the alleged violation. NS convened a hearing on November 24, 2009. By letter dated December 3, 2009, NS notified Petitioner that his certification was revoked for "excessively speeding between M.P. D30.6 and M.P. D33.3 between the hours of approximately 3:53 A.M. and 3:57 A.M. on November 4, 2009, while performing service as Engineer on Train 255L504."

A petition was timely filed with FRA on March 17, 2010 (Petition), by the Brotherhood of Locomotive Engineers and Trainmen (BLET) on behalf of Petitioner, requesting that FRA review NS's decision to revoke Petitioner's certification. The petition asserts that the revocation was improper because:

1. NS failed to provide any proof that Petitioner violated a rule that warranted a certificate revocation. The maximum speed of the track was 60 mph, Petitioner received a Clear signal indication at M.P. D30.6, and Petitioner operated within the applicable speed limits for the cited territory.

2. NS failed to inspect the signal system following the incident. Petitioner maintains that the approach signal coming into Whitaker Interlocking displayed a clear indication. NS failed to show that the signal system was working properly. The Board's decision in 2008-07 involving an Amtrak engineer substantiates his position. In that case, the Board granted a petition because Amtrak failed to inspect the signal system in the field and relied on nonvital logic circuits to make its case. Petitioner submits that NS did the same here.

Pursuant to 49 C.F.R. § 240.405(b) and (c), FRA sent a copy of the Petition to NS, which was afforded an opportunity to comment. NS responded to the Petition by letter dated July 27, 2010. In response to Petitioner's arguments, NS presented the following points:

1. The signal at MP D30.6 was displaying an APPROACH indication, which, pursuant to NS Operating Rule (Rule) 285, required Petitioner to "at once" reduce his train speed to medium speed (30 mph) and be prepared to stop at the next signal. Since Petitioner continued to operate at 55 mph, he exceeded the required 30 mph speed by more than 10 mph. The locomotive event recorder data (Exhibit A, p. 22) shows that from the time Petitioner passed the approach signal to the point where the train reached 30 mph was 1.7 miles. The data also shows that Petitioner operated above 40 mph for approximately 1.5 miles, which is 10 mph over the maximum authorized speed. Petitioner should have reached 30 mph speed before this distance.
2. General Supervisor C&S Caldwell, who was present and supervised the testing of the signal system at MP D30.6 on November 4, 2009, testified that an extensive testing of the signal system was performed immediately following Petitioner's claim and that there was no possibility that the signal's aspect would show anything other than yellow (APPROACH). During the post incident interview, all three crewmembers stated that they observed a green over red aspect. However, Signal Supervisor Caldwell testified that the signal was only capable of displaying a single green aspect with nothing lit underneath it. Further, the Amtrak case cited by Petitioner is entirely different from this case because in this case, NS conducted a thorough inspection of the signal system.

Board's Determination

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

1. On November 4, 2009, between the hours of approximately 3:53 a.m. and 3:57 a.m., while operating Train 255L504, Petitioner exceeded the maximum authorized speed between MP D30.6 and MP D33.3.
2. The train crew consisted of Petitioner, a brakeman, and a conductor. The crew was operating in freight service from Detroit, MI, to Peru, IN, when the incident occurred.

3. The crew was traveling westward on single track approaching Whitaker, MI, when they passed an APPROACH signal at MP D30. The maximum authorized speed on the main track in that area is 60 mph, and they were operating at 55 mph. The APPROACH indication required Petitioner to reduce speed to 30 mph at once. Tr. at 27.
4. Rule 285 states that with respect to an Approach signal one must: "Proceed preparing to stop at next signal. Train or engine exceeding Medium Speed must at once reduce to that speed. Medium Speed - a speed not exceeding 30 mph. Lake Division Special Instructions."
5. Shortly after passing this signal, they observed a stop signal indication displayed on the next signal at Whitaker Interlocking. Petitioner, by using normal braking, stopped the train short of the stop signal. Because of Petitioner's perception that he was operating on a CLEAR indication, he did not reach 30 mph until he was well into the block as he was stopping for the stop signal.
6. The signal system was inspected in the field and found to be working properly after the incident. Tr. at 30. The signal supervisor also testified that the signal was not capable of displaying a green over a red as the crew stated. Additionally, the signal was never requested to be displayed for Petitioner's train movement. Tr. at 30.
7. Petitioner exceeded the speed by more than 10 mph for 1.5 miles after passing the signal. This is the distance between the distant signal and Whitaker interlocking. Regardless of an established speed point, Petitioner should have been down to 30 mph well before he reached the signal.

Analysis of the Petition

In reviewing petitions of revocation decisions, the Board considers four issues in determining whether decertification was proper under FRA's regulations. See 49 C.F.R. § 240.405(f). First, whether substantial evidence exists to support the railroad's factual findings in its decision. See 58 Fed. Reg. 18982, 19001 (1993). Second, whether procedural irregularities committed at the railroad investigative hearing caused the petitioner substantial harm. Id. Third, whether the railroad's legal interpretations are correct based on a de novo review. Id. Finally, 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).

Petitioner raises a legal issue in his first assertion, stating that NS failed to provide any proof that Petitioner violated a rule that warranted a certificate revocation. "As to legal issues involving interpretation of regulations or statutes administered by FRA, the Board will provide "de novo" review, which means that the Board will not be bound by legal interpretations reached by the railroad in making its decision." 58 Fed. Reg. 18982, 19001 (Apr. 9, 1993).

NS Operating Rule 285 required Petitioner to "at once" reduce his train speed to medium speed (30 mph) and be prepared to stop at the next signal. Petitioner did not comply with this

operating rule, which was also a violation of Federal regulations governing speed for engineers. See 49 C.F.R. § 240.117(e)(2). The signal at MP D30.6 was displaying an APPROACH indication for Petitioner's locomotive. Petitioner continued to operate at 55 mph. The locomotive event recorder data shows that from the time Petitioner passed the approach signal to the point where the train reached 30 mph was 1.7 miles. The data also shows that Petitioner operated above 40 mph for approximately 1.5 miles, which is 10 mph over the maximum authorized speed. See Exhibit A, p. 22. According to the event recorder, Petitioner began reducing his speed at MP D31.1, which is half a mile after the signal at MP D30.6. At a speed of 55 mph, this would be about 30 seconds after approaching the signal. The rule requires that an individual take immediate action, which NS interprets as right away, or as soon as it can safely be done. The record shows no evidence supporting why Petitioner would have had to wait 30 seconds, or half a mile after the signal, to begin safely reducing his speed. Thus, Petitioner's choice to violate the railroad's operating rule ultimately resulted in a revocation incident.

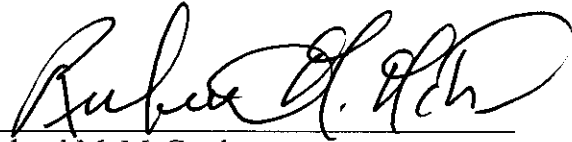
Petitioner raises a factual issue in his second assertion. "When considering factual issues, the Board will determine whether there is substantial evidence to support the railroad's decision, and a negative finding is grounds for reversal." 58 Fed. Reg., 18982, 19001 (Apr. 9, 1993). Specifically, Petitioner alleges that NS failed to show that the signal system was working properly following the incident by failing to inspect the signal afterwards. Additionally, Petitioner claims that the Board's decision in FRA Docket No. EQAL-2008-07 supports his position. In that case, the Board granted a petition because the railroad involved, Amtrak, failed to inspect the signal system in the field and relied on nonvital logic circuits to make its case.

In his second argument, Petitioner confuses "inspection of the signal system" to mean event recorder data taken from a signal system event recorder located in the field at the signal. This is not a Federal requirement for validating signal violations. General Supervisor C&S Caldwell, who was present and supervised the testing of the signal system at MP D30.6 on November 4, 2009, testified that an extensive testing of the signal system was performed immediately following Petitioner's claim. The testing revealed that there was no possibility that the signal's aspect would show anything other than yellow. Further, the Board's decision in FRA Docket No. EQAL-2008-07 bears no relevance to this case, as NS has provided sufficient evidence to support that the signal system was inspected in the field the same day as the incident. As such, the Board finds this argument without merit and that there is substantial evidence to support NS's decision to decertify Petitioner.

Conclusion

Based on its review of the information provided, the Board finds there is substantial evidence to support NS's decision, that NS acted properly in revoking Petitioner's certification, and that Petitioner's actions do qualify as a decertifiable event under 49 C.F.R. § 240.117. In doing so, the Board finds that Petitioner violated 49 C.F.R. § 240.117(e)(2) which requires complying with the maximum authorized speed. Consequently, the Board hereby denies the Petition in accordance with the provisions of 49 C.F.R. Part 240.

Issued in Chicago, IL on MAR 03 2011.



Richard M. McCord
Chairman,
Locomotive Engineer Review Board

SERVICE LIST EQAL-2010-18

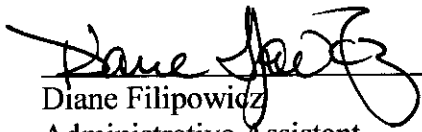
A copy of the Locomotive Engineer Review Board in this case has been sent by certified mail to each person shown below.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Vincent G. Falconer
8311 Normile Street
Detroit, MI 48204

Mr. Jeremy D. Moore
Director of Labor Relations
Norfolk Southern Corporation
223 East City Hall Avenue
Norfolk, VA 23510-1728

Mr. Ronald A. Couch
Vice General Chairman, BLE&T/IBT
37217 Charter Oaks Boulevard
Clinton Twp, MI 48036-2411



Diane Filipowicz
Administrative Assistant

MAR 03 2011

Date

enc: Post LERB Memo

cc: FRA Docket EQAL-2010-18

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. Ronald A. Couch
 Vice General Chairman, BLE&T/IBT
 37217 Charter Oaks Boulevard
 Clinton Twp, MI 48036-2411

EGAL 2010-18

2. Article Number (Transfer from service label) **7008 3230 0002 3925 8471**

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Domestic Return Receipt

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Mr. Jeremy D. Moore
 Director of Labor Relations
 Norfolk Southern Corporation
 223 East City Hall Avenue
 Norfolk, VA 23510-1728

EGAL 2010-18

2. Article Number (Transfer from service label) **7008 3230 0002 3925 8488**

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 8311 Normile Street
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EGAL 2010-18

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