

**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. E. M. Renteria's
Locomotive Engineer Certification

FRA Docket Number EQAL 2010-22

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. E. M. Renteria'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 January 30, 2010, while operating Train 2KG2LBD-29, Petitioner allegedly exceeded the maximum authorized speed by more than 10 miles per hour (mph), when he failed to comply with a more restrictive cab signal indication in the vicinity of milepost (MP) 611, on the Laramie Subdivision. See Tr. at 4; Pet. at 4; 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 February 10, 2010, and UP notified Petitioner of the decertification by letter dated February 19, 2010.

Petitioner's Assertions

The United Transportation Union (UTU) 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 24, 2010 and was timely. The petition asserts that the revocation was improper because:

- (1) Petitioner did not violate restricted speed, because his cab signal only dropped to restricting for a few seconds and then came back up. See Pet. at 2. It did not stay at a restricting signal as the UP supervisors allege. See id.

- (2) The operating rule efficiency test was not conducted properly because there were no signal personnel present when the signal system was affected when the supervisors placed the shunt down. See Pet. at 3.

UP's Response

Pursuant to 49 C.F.R. § 240.405(b), (c), a copy of the petition was sent to UP on June 9, 2010, and the railroad was afforded an opportunity to comment. UP responded to Petitioner's assertions by letter dated August 9, 2010, as follows:

- (1) The cab signal system on Petitioner's locomotive was thoroughly tested after the incident. See Resp. at 6-7. A second shunt was placed on the track and a supervisor in the locomotive cab verified that the cab signal was functioning properly. See Resp. at 5-6.
- (2) When managers are to do this type of test, "they are required to notify the train dispatcher to inform them that they are going to affect the signal system at a specific location." Resp. at 8. "Managers may also call the Signal Dispatch Center" that issues a ticket for record keeping. See id. All managers are trained and qualified to properly perform these tests. See id. There was no issue concerning the propriety of this test. See id.

Board's Determinations

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

- (1) On January 30, 2010, while operating Train 2KG2LBD-29, Petitioner exceeded the maximum authorized speed by more than 10 mph, when he failed to comply with a more restrictive cab signal indication in the vicinity of MP 611, on the Laramie Subdivision. See Tr. at 4; Pet. at 4; Resp. at 1.
- (2) Unknown to the crew, two UP supervisors were conducting an operating rule efficiency test. See Tr. at 20. The supervisors placed a track shunt between the rails between MP 610 and MP 611. See Tr. at 21. The shunt would cause the cab signal system on Petitioner's locomotive to drop to a restricting indication. See id. UP Rules required Petitioner to immediately comply with the changed cab signal indication on that section of track. See Tr. at 26-27. The maximum authorized speed for a restricting indication is 20 mph. See Tr. at 27. The supervisor's radar reading as Petitioner's train passed their location was 42 mph. See Tr. at 21.
- (3) After the train passed, the supervisors checked the effectiveness of their shunt by observing the signal governing the block where the shunt was placed. See Tr. at 21.

- (4) The crew stated that they were traveling west on Main Track No. 2 and crossed over at CPW 609 to Main Track No. 1. See Tr. at 28. The cab signal dropped to a restricting aspect as they were crossing over, then immediately came back up to clear aspect and stayed clear as the train passed the managers. See Tr. at 28, 109; Tr. Ex. 11.

Analysis of the Petition

Petitioner's first assertion involves a substantive factual issue. Petitioner argues that he did not violate restricted speed, as the cab signal indication did not remain at restricting as shown by the event recorder. See Pet. at 2. "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).

Petitioner's first assertion is without merit. The locomotive event recorder data indicates that the cab signal dropped to a restricting indication and stayed in this position for two minutes and nineteen seconds (one mile, two thousand, eight hundred, sixty-eight feet). See Tr. at 21, 30, 60; Tr. Ex. 14. UP verified that the cab signals were functioning properly after the test by conducting a reenactment. See Tr. at 21, 59-60, 76; Resp. at 5-6. UP demonstrated that the cab signals were working properly during the routine departure test. See Tr. at 76; Resp. at 6-7. The signal department found no problems when they inspected the track's electrical current. See Tr. Ex. 12; Resp. at 6. Moreover, if there were a technical malfunction, the cab signals would have defaulted to the most restrictive aspect. See Tr. at 87; Resp. at 7. UP provided substantial evidence to show that the cab signals and locomotive event recorder were working properly in the locomotive cab during the operating rule efficiency test.

The Board finds Petitioner's second argument, also a substantive factual issue, to be without merit. Petitioner argues that signal personnel should have been present when the signal system was affected by the managers. See Pet. at 3. The policy of notifying the dispatching center that a signal test is being conducted is to prevent the center from believing that the signal system is malfunctioning and dispatching signal maintainers to the area to fix the problem. See Resp. at 8. The absence of signal personnel at the test did not affect the validity of the test.

UP has provided substantial evidence to support its decertification decision. The event recorder data indicates that the cab signals dropped to restricting and stayed there for approximately two minutes and nineteen seconds. See Tr. at 21. The cab signals were tested immediately following the test and a supervisor verified that the cab signal display in the locomotive cab was working properly when reacting to a track shunt. See Tr. at 76; Resp. at 6. Petitioner was required to take immediate action to reduce his speed according to the restricted signal indication. See Tr. at 31; Tr. Ex. 6, "9.3.1, Item 20, Automatic Cab Signals." UP Rule 6.27, "Movement at Restricted Speed," requires that "[w]hen the train or engine is required to move at restricted speed, the crew must keep a look out for broken rail and not exceed 20 mph." See Tr. at 27; Tr. Ex. 9.

Both the radar reading and locomotive event recorder data indicated that the train was traveling at approximately forty-two mph when the train should have been operated at twenty mph. See

Tr. at 21, 30-31; Tr. Ex. 14. The testimony shows that within the two minutes and nineteen seconds of the restricting signal indication, Petitioner's speed should have decreased in response. See Tr. at 32, 49. Furthermore, Petitioner's speed actually increased during that period. See Tr. Ex. 14; Resp. at 4. As such, UP's assessment that Petitioner exceeded the maximum authorized speed by 10 mph is reasonable.

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 **DEC 16 2010**.



Richard M. McCord
Chairman,
Locomotive Engineer Review Board

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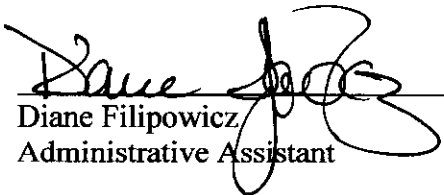
A copy of the Locomotive Engineer Review Board decision in this matter has been sent by certified mail and return receipt requested to each person shown below.

Mr. Edward M. Renteria
P.O. Box 4024
Cheyenne, WY 82003

Mr. Tyler Thompson
Local Chairman, UTU
6429 Main Street
Cheyenne, WY 82009

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

DEC 16 2010

Date

enc: Post LERB Memo

cc: FRA DOCKET EQAL 2010-22

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Mr. Lawrence Brennan, Jr. Manager, Engineering Certification & Licensing Union Pacific Railroad Company 1400 Douglas Street, Mailstop 1010 Omaha, NE 68179	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.	
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Mr. Tyler Thompson Local Chairman, UTU 6429 Main Street Cheyenne, WY 82009	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.	
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1. Article Addressed to:

Mr. Edward M. Renteria
P.O. Box 4024
Cheyenne, WY 82003

EQAL 2010-22

2. Article Number
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