

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

Locomotive Engineer Review Board

Decision Concerning  
Canadian Pacific Railway's  
Revocation of Mr. J. A. Stroik's  
Locomotive Engineer Certification

**FRA Docket Number EQAL 2010-23**

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**Decision**

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of the Canadian Pacific Railway (CP) to revoke Mr. J. A. Stroik'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 February 9, 2010, at approximately 4:00 a.m., Petitioner allegedly refused to participate in a Federal random drug test at St. Paul, Minnesota, because he left railroad property after being notified that his job assignment, H16, was chosen for a random drug test that morning. See Tr. at 4-5; Pet. at 2.

CP charged Petitioner with a violation of 49 C.F.R. Part 219, by refusing to submit to a FRA mandated Random Drug and Alcohol test when selected, a revocable offense under 49 C.F.R. § 240.117(e)(6). An investigation and hearing was held on March 9, 2010, and CP notified Petitioner of the revocation by letter on March 24, 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 CP's decision to revoke Petitioner's certification. The petition was received on June 1, 2010 and was timely. The petition asserts that the revocation was improper because:

- (1) Petitioner did not refuse to take the random drug test. He had a documented medical emergency and should have been allowed to forego the drug test pursuant to 49 C.F.R. § 219.603. See Pet. at 2.

### **CP's Response**

Pursuant to 49 C.F.R. § 240.405(b), (c), a copy of the petition was sent to CP on June 9, 2010, and the railroad was afforded an opportunity to comment.

- (1) CP did not respond to Petitioner's assertions.

### **Board's Determinations**

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

- (1) On February 9, 2010, at approximately 4:00 a.m., Petitioner refused to participate in a Federal random drug test at St. Paul, MN, because he left railroad property after being notified that he was chosen for a random drug test that morning. See Tr. at 4-5; Pet. at 2.
- (2) The CP supervisor notified Petitioner of the random drug test in a face-to-face conversation out in front of the conference room shortly after Petitioner reported to work at 4:00 a.m. See Tr. at 4-5. The supervisor then walked to the lunch room to look for the conductor on the job and told the engineer to follow him. See id. When he found the conductor, the conductor informed him that the engineer just called and said he was going home sick. See Tr. at 5. Petitioner left railroad property without completing the drug test. See id.
- (3) Petitioner did not notify the CP supervisor of his departure or the reason for it. See Tr. at 6, 17-18, 24. The supervisor later learned that Petitioner also called the Crew Management Center (CMC) from his vehicle to report he was sick at approximately 4:11 a.m. See Tr. at 5, 7, 9, 25; Carrier Ex. C, D.
- (4) Several hours after leaving CP's property, Petitioner went to the hospital complaining of a migraine headache. See Tr. at 29, 33.

### **Analysis of the Petition**

Petitioner's assertion involves a substantive factual issue. Petitioner argues that he did not refuse to take the random drug test, because he had a documented medical emergency under 49 C.F.R. § 219.603. 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).

The Board finds that Petitioner's assertion is without merit. Substantial evidence was presented at the hearing proving that Petitioner refused to take the random drug test. The record indicates that Petitioner was notified that he was to participate in a random drug test at approximately 4:00 a.m. See Tr. at 4-5. Petitioner made no mention of any medical emergency or sickness to his supervisor at the time he was notified. See Tr. at 6, 10. Petitioner disappeared shortly after

he was notified of the test. See Tr. at 5-6.

Petitioner drove himself to a hospital emergency room and complained of a migraine headache. See Tr. at 29. Petitioner checked in to the emergency room at 7:56 a.m., almost four hours after leaving CP property. See id. He was treated with an IV and some pain killer injections and was released. See Tr. at 30, 34. He refused any additional tests, stating that he would seek treatment from his personal physician. See Tr. at 34; BLE Ex. A at 3. Petitioner produced the emergency room treatment record at the hearing and claimed his actions qualified as a documented medical emergency as defined in the regulation. See Tr. at 29; BLE Ex. A.

CP's determination that Petitioner's actions are not related to an excusable medical emergency under 49 C.F.R. § 219.603 is reasonable. Petitioner's actions constitute a refusal to test, which is considered a positive test result by 49 C.F.R. § 219.107. Thus, CP's revocation decision is supported by substantial evidence.

**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

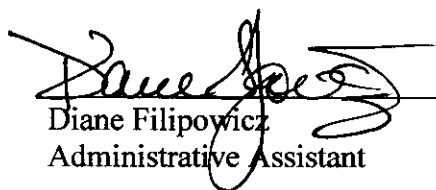
SERVICE LIST EQAL 2010-23

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. James A. Stroik  
2206 Hale Avenue North  
Oakdale, MN 55128

Mr. Thomas B. Schwartz  
Local Chairman, BLE&T Division 494  
8985 Indahl Avenue So.  
Cottage Grove, MN 55016

Mr. J. N. Saladin  
Manager, Operating Practices, US  
Canadian Pacific Railway  
Engineering Training Center  
St. Paul Business Center East  
1997 Sloan Place, Suite 21  
Maplewood, MN 55117

  
Diane Filipowicz  
Administrative Assistant

**DEC 16 2010**

Date

enc: Post LERB Memo

cc: FRA DOCKET EQAL 2010-23

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1. Article Addressed to:

Mr. J. N. Saladin, Manager, Operating Practices, US  
 Canadian Pacific Railway, Engineering Training Center  
 St. Paul Business Center East  
 1997 Sloan Place, Suite 21  
 Maplewood, MN 55117

**EQAL 2010-23**

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1. Article Addressed to:

Mr. Thomas B. Schwartz  
 Local Chairman, BLE&T Division 494  
 8985 Indahl Avenue So.  
 Cottage Grove, MN 55016

**EQAL 2010-23**

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1. Article Addressed to:

Mr. James A. Stroik  
 2206 Hale Avenue North  
 Oakdale, MN 55128

**EQAL 2010-23**

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