

**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 Ms. S. R. George's
Locomotive Engineer Certification

FRA Docket Number EQAL 2010-24

Decision

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the alleged decision of the Union Pacific Railroad Company (UP) to revoke Ms. S. R. George'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 dismisses the petition for the reasons set forth below.

Background

On February 17, 2010, while called to operate between Fife, Washington, and Portland, Oregon, Petitioner allegedly failed to perform a proper Class III train air brake test after coupling her train together at Fife Yard. See Pet. at 2.

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 alleged revocation of Petitioner's certification. Petitioner submitted several documents to FRA, including an advanced notification of filing on May 3, 2010, a petition for review (petition) on June 23, 2010, and a brief in support of the petition on July 15, 2010. The petition asserts that:

- (1) UP's termination letter demanded that Petitioner "deliver to the yard office all [her] passes and Company property including Company radios." Pet. at 14; Pet. Ex. 1.1. This phrase impliedly included her operating certificate, therefore, by asking for its return, UP committed a *de facto* revocation of that certificate. As Petitioner was not provided with an investigation or hearing, UP's *de facto* revocation failed to provide her with due process. See Pet. at 11-13.
- (2) There was a *de facto* revocation of Petitioner's certification because she was dismissed for allegedly performing an improper Class III brake test, a revocable offense under 49 C.F.R. Part 240. Petitioner argues that her alleged violation of

UP Air Brake and Train Handling (ABTH) Rule 30.15 necessarily means that it was also a violation of 49 C.F.R. § 232.211, is prohibited conduct under 49 C.F.R. § 240.305(a)(3), and UP was thereby required to consider it a violation of 49 C.F.R. § 240.117(e)(3), making it a revocable offense. See Pet. at 3, 5-15. As stated above, Petitioner argues that UP failed to provide her with due process. See Pet. at 11-13.

UP's Response

Pursuant to 49 C.F.R. § 240.405(b), (c), a copy of the petition was sent to UP on August 3, 2010, and the railroad was afforded an opportunity to comment. UP responded to Petitioner's assertions by letters dated July 21, 2010 and October 7, 2010 ("response"), as follows:

- (1) UP "did not revoke Petitioner's certification, and her employment records do not include a Notice of Revocation relating to the events of February 17, 2010." Resp. at 4. "Because this matter involves neither a revocation, nor a denial of certification nor a denial or recertification, the Petition fails to state a dispute over which the [Board] has jurisdiction under 49 U.S.C. 240.401(a)." Id.
- (2) UP disagrees with Petitioner's argument that UP's "decision to terminate Petitioner's employment pursuant to the signed Leniency Agreement amounts to a de facto revocation or denial." Resp. at 5. UP agrees with FRA Regional Administrator Mark S. Daniels who "reported 'that the Petitioner's engineer's certificate had not been revoked even though the employee had been dismissed through an alternative discipline procedure in accordance with a collective bargaining agreement.'" Id. at 6.

Board's Determinations

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

- (1) On February 17, 2010, while called to operate between Fife, Washington, and Portland, Oregon, Petitioner allegedly failed to perform a proper Class III train air brake test after coupling her train together at Fife Yard. See Pet. at 2.
- (2) The incident was discovered by a random locomotive event recorder download of Petitioner's train that day. See Pet. at 3. A supervisor notified Petitioner that she failed to comply with ABTH Rule 30.15 by failing to reduce the train's brake pipe pressure by the required 20 pounds per square inch (psi), by only reducing the pressure by 12 psi. See id.
- (3) UP placed Petitioner in "Laid-Off Fired status" on March 1, 2010. See Pet. at 2. Petitioner was dismissed by UP without a hearing, formalized by letter on March 10, 2010, citing Petitioner's violation of ABTH Rule 30.15 and the provisions of the October 9, 2009, "Leniency Agreement." See Pet. Ex. 1.1; Resp. Ex. 2. UP

did not charge Petitioner with a revocable offense under 49 C.F.R. § 240.307 and neither Petitioner nor UP produced a revocation decision relating to the February 17, 2010 incident to FRA.

- (4) Petitioner's assertion that UP's statement in its March 10, 2010 termination letter requiring Petitioner to return all Company property implies that UP was revoking her certification lacks merit. The Board finds that a locomotive engineer's return of the paper certificate to the railroad does not qualify as a revocation. Regardless of whether UP's statement to return all Company property implied that a paper certificate was required to be returned to UP upon Petitioner's dismissal, this action has no legal implications for the actual validity of the paper certificate or Petitioner's certification. Petitioner's actual certification is valid until it is revoked or it expires. See 74 Fed. Reg. 68173, 68175 (Dec. 23, 2009). As there was no revocation of the certification, the Board lacks jurisdiction to consider the due process issues Petitioner raised.¹
- (5) Petitioner's second assertion that because she failed to perform a Class III brake test properly her failure constituted a revocable offense, and thus her dismissal was a *de facto* revocation, also lacks merit. As 49 C.F.R. § 240.401(a) explains, the Board has authority to hear appeals only when a "person has been denied certification, denied recertification, or has had his or her certification revoked." In this case, as UP did not deny Petitioner's certification or recertification, or revoke Petitioner's certification, there is no case before the Board to review.²

Conclusion

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

Issued in Chicago, IL on DEC 02 2010



Richard M. McCord
Chairman,
Locomotive Engineer Review Board

¹ Because Petitioner's certification has not been revoked, Petitioner is free to be employed by another railroad, provided that the railroad requests the UP certification information prior to issuing a certificate. See 49 C.F.R. § 240.113.

² As there has been no revocation, Petitioner's certification is still a valid certificate that other railroads may rely on when determining whether the person is qualified pursuant to 49 C.F.R. § 240.225. See 74 Fed. Reg. 68173, 68175 (Dec. 23, 2009).

SERVICE LIST EQAL 2010-24

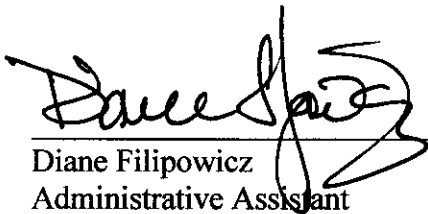
A copy of the Locomotive Engineer Review Board decision in this matter has been sent by certified mail and return receipt requested to each person shown below.

Ms. Shelley R. George
9433 37th Avenue, SW
Seattle, WA 98126-3836

Mr. Thomas A. Frederick
Chairman, BLE&T
20422 SE 286th Street
Covington, WA 98042-5800

Mr. Lawrence Brennan, Jr.
Manager, Engineering Certification & Licensing
Union Pacific Railroad Company
1400 Douglas Street, Mailstop 1010
Omaha, NE 68179

Ms. Christine J. Hampton
Union Pacific Railroad Company
1400 Douglas Street, Mailstop 1010
Omaha, NE 68179-1010



Diane Filipowicz
Administrative Assistant

DEC 02 2010

Date

enc: Post LERB Memo

cc: FRA DOCKET EQAL 2010-24

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<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 <input type="checkbox"/> Agent <input type="checkbox"/> Addressee X	
1. Article Addressed to: Ms. Christine J. Hampton Union Pacific Railroad Company 1400 Douglas Street, Mailstop 1010 Omaha, NE 68179-1010 EGAL 2010-24	B. Received by (Printed Name)	C. Date of Delivery
	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.		
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes		
2. Article Number (Transfer from service label) 7008 3230 0002 3925 3537		
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540		

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1. Article Addressed to: Mr. Lawrence Brennan, Jr. Manager, Engineering Certification & Licensing Union Pacific Railroad Company 1400 Douglas Street, Mailstop 1010 Omaha, NE 68179 EGAL 2010-24	B. Received by (Printed Name)	C. Date of Delivery
	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
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1. Article Addressed to: Mr. Thomas A. Frederick Chairman, BLE&T 20422 SE 286th Street Covington, WA 98042-5800 EGAL 2010-24	B. Received by (Printed Name)	C. Date of Delivery
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1. Article Addressed to:

Ms. Shelley R. George
9433 37th Avenue, SW
Seattle, WA 98126-3836

EQAL 2010-24

2. Article Number
(Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee
X

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

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