

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

Locomotive Engineer Review Board

Decision Concerning  
Kansas City Southern Railway Company's  
Revocation of Mr. R. Keith's  
Locomotive Engineer Certification

**FRA Docket Number EQAL 2010-25**

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**Decision**

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of the Kansas City Southern Railway Company (KCS) to revoke Mr. R. Keith'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 March 26, 2010, at approximately 3:11 a.m., while operating Train C-TUKC-24, Petitioner allegedly failed to stop and protect a highway-rail grade crossing reported to be experiencing an activation failure of Automatic Warning Devices. See Tr. at 10-12; Pet. at 3-4, 6; and KCS Resp. at 1.

KCS charged Petitioner with a violation of 49 C.F.R. § 240.117(e)(4) – “occupying main track or a segment of main track without proper authority or permission.” An investigation and hearing was held on April 2, 2010, and KCS notified Petitioner of the revocation by letter dated April 7, 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 KCS's decision to revoke Petitioner's certification. The petition was received on July 9, 2010 and was timely filed. The petition asserts that the revocation was improper because:

Petitioner did stop and flag what he believed to be the correct crossing as indicated on the crossing chart that he and other employees use. See Pet. at 3. The conductor had obtained the crossing chart from the Heavener Yard Office. See Tr. at 19, 28.

### **KCS's Response**

Pursuant to 49 C.F.R. § 240.405(b), (c), a copy of the petition was sent to KCS on August 3, 2010, and the railroad was afforded an opportunity to comment. By letter dated August 17, 2010, KCS responded to Petitioner's assertion, as follows:

Petitioner failed to stop and flag the correct crossing. The response states that "the document [containing the list of crossings] referred to in much of the transcript . . . is information provided by the Operation Lifesaver Organization, and was produced at the request of many UTU and BLET members with the understanding that the information contained within may not be one hundred percent accurate." See KCS Resp. at 1.

### **Board's Determinations**

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

- (1) On March 26, 2010, at approximately 3:11 a.m., while operating Train C-TUKC-24, Petitioner failed to stop and protect a highway-rail grade crossing reported to be experiencing an activation failure of Automatic Warning Devices. See Tr. at 10-12; Pet. at 3-4, 6; and KCS Resp. at 1.
- (2) The train crew consisted of Petitioner and a conductor. The crew was operating in freight service from Heavener, OK, to Shreveport, LA on the Heavener Subdivision in a northbound direction. See Pet. at 3; Tr. at 10; and Tr. at KCS Ex. 3.
- (3) In the vicinity of Mile Post (MP) 311.63, Spiro, OK, a KCS supervisor was conducting an operating rule efficiency test to determine the crew's compliance with Rule 6.32.2A (Automatic Warning Devices Malfunction). See Tr. at 12. This rule requires the crew to stop, place a crew member on the crossing to warn traffic, and then proceed over the crossing on hand signals from the crew member on the crossing. See Tr. at 12-13; and Tr. at KCS Ex. 6a, 6b. The KCS supervisor called the "Critical Incident Desk" at KCS's dispatch center and instructed the train dispatcher to issue Form C instructions to the crew indicating that an activation failure has occurred at Ash Street crossing, located at MP 311.63. See Tr. at 10-11, 13.
- (4) The supervisor observed Petitioner's train proceed over the Ash Street crossing at 10 miles per hour (mph) without stopping and flagging the crossing. See Tr. at 12, 15; and Tr. at KCS Ex. 7a, 7b. He also observed as the crew stopped and flagged a different crossing than the crossing specified, which was not equipped with automatic warning devices. See Tr. at 15, 27. Testimony indicates there was

heavy fog in the area. See Tr. at 24, 29.

### **Analysis of the Petition**

Petitioner's assertion involves an intervening cause. Petitioner argues that his reliance on the incorrect crossing list renders KCS's revocation decision improper. See Pet. at 3; and Tr. at BLET Ex. 1. In determining whether KCS's revocation decision was proper under FRA's regulations, the Board considers 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).

The Board finds that Petitioner's assertion is without merit. The testimony is clear that the crew did not stop at the crossing at Ash Street, MP 311.63, as required by the Form C instruction, but were instead operating at 10 mph through the crossing. See Tr. at 12, 14-15, 21; Tr. at KCS Ex. 5 (Track Bulletin #495, Form C); and Tr. at KCS Ex. 7 (locomotive event recorder data). Instead, the crew stopped and flagged a crossing at MP 311.39 that was not equipped with automatic warning devices. See Tr. at 15, 27. While KCS Rule 6.32.2A, Automatic Warning Devices Malfunction, specifically applies to crossings equipped with automatic warning devices, it appears that it never occurred to the crew to disregard this crossing. See Tr. at 21; and Tr. at KCS Ex. 6b (Rule 6.32.2A, Automatic Warning Devices Malfunction). Even though Petitioner relied on a list of crossings his conductor purportedly received at the Heavener Yard office, it was not an official list provided by KCS and was never asserted to be entirely accurate. See Tr. at 19, 30, 32, 35; and KCS Resp. at 1. Furthermore, there was only one crossing in the Spiro, OK area that was gated with an automatic warning device, and thus eligible for a potential Rule 6.32.2A special instruction. See Tr. at BLET Ex. 2.

Prohibited conduct includes the "fail[ure] to comply with any mandatory directive concerning the movement of a locomotive or train by occupying main track or a segment of main track without proper authority or permission." 49 C.F.R. § 240.305(a)(4). Pursuant to GCOR Rule 6.11, a track bulletin is a mandatory directive. Petitioner failed to follow a mandatory directive concerning the movement of a locomotive or train by occupying main track or a segment of main track without proper authority or permission. Authority or permission would be granted only by the fulfillment of the conditions of the track bulletin (a mandatory directive) issued by the train dispatcher. By failing to stop for the highway-rail grade crossing at Ash Street, MP 311.63, as required by the Track Bulletin, Form C, violating Rule 6.32.2A, Petitioner operated on main track without proper authority. See Tr. at 12-13; Tr. at KCS Ex. 6a (Rule 6.3, Main Track Authorization); Tr. at KCS Ex. 6b (Rule 6.32.2A, Automatic Warning Devices Malfunction); and Tr. at KCS Ex. 5 (Track Bulletin #495, Form C). As such, KCS's assessment that Petitioner operated without proper authority on main track 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 JAN 19 2011.



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Richard M. McCord  
Chairman,  
Locomotive Engineer Review Board

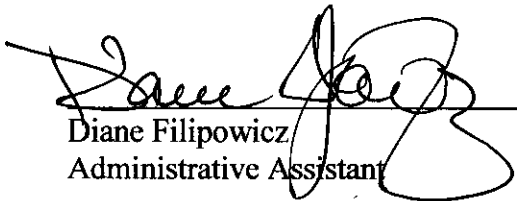
SERVICE LIST EQAL 2010-25

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. Robert Keith  
4092 Mount Carmel Road  
Frontenac, KS 66763

Mr. Richard Johnston  
Local Chairman, BLE&T, Division 527  
5909 Shelby Oaks Drive, Suite 139  
Memphis, TN 38134-7318

Mr. L. E. Jameson, Jr.  
Director, Operating Practices and Rules  
Kansas City Southern Railway Company  
4601 Shreveport-Blanchard Highway  
Shreveport, LA 71107

  
\_\_\_\_\_  
Diane Filipowicz  
Administrative Assistant

**JAN 19 2011**

\_\_\_\_\_  
Date

enc: Post LERB Memo

cc: FRA DOCKET EQAL 2010-25

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Mr. Robert Keith 4092 Mount Carmel Road Frontenac, KS 66763	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:	B. Received by (Printed Name)	C. Date of Delivery
Mr. L. E. Jameson, Jr. Director, Operating Practices and Rules Kansas City Southern Railway Company 4601 Shreveport-Blanchard Highway Shreveport, LA 71107	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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7008 3230 0002 3925 3230	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
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1. Article Addressed to:	B. Received by (Printed Name)	C. Date of Delivery
Mr. Richard Johnston Local Chairman, BLE&T, Division 527 5909 Shelby Oaks Drive, Suite 139 Memphis, TN 38134-7318	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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