

**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. J. A. Ugarph's  
Locomotive Engineer Certification

**FRA Docket Number EQAL 2010-26**

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**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. J. A. Ugarph'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 May 1, 2010, at approximately 4:20 p.m., while operating Yard Assignment YCL06-01, Petitioner allegedly failed to protect a shoving movement which resulted in Petitioner operating over a derail and past a red flag on the Camanche Lead Track, at approximately milepost (MP) 3.1, on the Clinton Subdivision. See Tr. at 4; Pet. at 1-2; Resp. at 1.

UP charged Petitioner with a violation of 49 C.F.R. § 240.117(e)(1), "failure to control a locomotive or train in accordance with a signal indication, excluding a hand or radio signal indication or a switch, that requires a complete stop." An investigation and hearing was held on May 12, 2010, and UP notified Petitioner of the decertification by letter dated May 20, 2010.

**Petitioner's Assertions**

Petitioner filed a petition with FRA requesting that the Board review UP's decision to revoke his certification. The petition was received on July 6, 2010 and was timely filed. The petition asserts that the revocation was improper because there were mitigating circumstances for the red flag violation:

- (1) The track foreman incorrectly placed the red flag and derail, so that it could not be seen from Petitioner's location on the locomotive consist as he pulled west out of Track 5. A reenactment of the accident showed that the red flag was obscured by the bay window on the second locomotive. Pet. at 2;

- (2) It is a safe practice for an engineer to operate from the east locomotive in the consist in this assignment, so the foreman can be clearly seen for hand signals. Pet. at 2; and
- (3) It is standard practice for an engineer to operate from the east locomotive in the consist on this assignment. There were no instructions regarding this until after the derailment. The new instruction now requires engineers to operate from the lead locomotive. Pet. at 2.

### **UP's Response**

Pursuant to 49 C.F.R. § 240.405(b), (c), a copy of the petition was sent to UP, and the railroad was afforded an opportunity to comment. UP responded to Petitioner's assertions by letter dated October 4, 2010, as follows:

- (1) The red flag and derail were placed on the track as required by the rules (U.P. Rule 136.4.2). Resp. at 3;
- (2) Petitioner was required by the rules (UP Rule 6.28 and 5.4.7) to be prepared to stop short of the red flag. The derail and the flag were on the track the entire time Petitioner was working, but Petitioner testified that he never saw the derail. Petitioner ran over the derail because he was not protecting the shoving movement. Resp. at 2 and 4; and
- (3) Petitioner was conducting a shoving movement. Under UP Rule 6.5, a shoving movement must be protected. Petitioner was in the east locomotive shoving the trailing locomotive ahead. He had no idea what was behind him on the track from that position. Resp. at 5.

### **Board's Determinations**

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

- (1) On May 1, 2010, a train crew consisting of Petitioner and conductor were working Yard Assignment YCL 06-01 in the West Yard in Clinton, IA when the incident occurred. Before beginning work, the crew had a job briefing with the yardmaster, who told the crew that a track foreman was working on the Camanche Lead track on the west end of the yard and placed a portable derail on that track. Pet. at 1.
- (2) Petitioner was operating a two-locomotive consist westward and was located in the east locomotive. Both locomotives were headed short hood east. The crew traveled westward to the west end of the yard on Track 7 and continued up the lead track to Track 5. Pet. at 2.

- (3) Petitioner saw the track crew working on the lead ahead and determined that he had enough head room to pull ten cars out of Track 5. The crew did not contact the track foreman to determine the location of the derail. The crew headed into Track 5, coupled ten cars and pulled westward onto the lead track again. As the crew was pulling west, they operated over a derail with a red flag attached that was placed west of the switch to Track 1. Pet. at 2.

### **Analysis of the Petition**

Petitioner's assertions involve intervening causes. Petitioner argues that mitigating circumstances render UP's revocation of his certificate decision improper. First, Petitioner asserts that the track foreman incorrectly placed the red flag and derail, so that Petitioner could not see it from his location on the locomotive consist as he pulled west out of Track 5. A reenactment of the accident showed that the red flag was obscured by the bay window on the second locomotive. Pet. at 2. In determining whether decertification 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 first assertion is without merit. UP Operating Rule 6.28, Movement on Other than Main Track, states that ". . . trains must move at a speed that allows them to stop within half the range of vision short of train, engine, railroad car men or equipment fouling the track, stop signal or derail or switch lined improperly." Tr. at 17; Tr. Ex. 7. UP Operating Rule 5.4.7 states, "A red flag or red light is displayed where trains must stop. When approaching a red flag or red light, the train must stop short of the red flag or light and not proceed . . ." Tr. at 18; Tr. Ex. 8. Although the crew was told that a portable derail and red flag were on the switching lead at the west end of the yard, the crew failed to contact the track foreman to determine the precise location of the derail. Pet. at 2. Petitioner operated from the east locomotive of the consist on this assignment where he did not have a clear view of what was in front of him. See Tr. at 28. Instead, of switching ends or protecting the point, the crew proceeded with the shoving movement and operated over the derail. It is inconsequential where the track foreman placed the derail and red flag because under the rules, Petitioner had to operate in such a way that he did not run over them. Thus, the Board rejects Petitioner's first assertion.

The Petitioner's second argument is that it is a safe practice for an engineer to operate from the east locomotive in the consist in this assignment, so the foreman can be clearly seen for hand signals. The Board finds this argument also to be without merit. Under U.P. Rule 6.5, Shoving Movements, Petitioner was required to "provide visual protection of the equipment being shoved." Tr. at 16; Tr. Ex. 6. Petitioner stated in his petition that he could not see the red flag. Pet. at 2. Thus, even though Petitioner may have perceived his position in the locomotive was a "safe practice," in reality, it was dangerous. Petitioner's position in the locomotive resulted in a blind shove and the consist running over a derail. Therefore, the Board rejects Petitioner's second argument.

Finally, Petitioner's third assertion, that it is standard practice for an engineer to operate from the east locomotive in the consist on this assignment, also lacks merit. As stated above, regardless of where the Petitioner was operating the locomotive, he was still required to observe the track ahead of his movement. If he could not see the track ahead, he was required to readjust his position to where he could see the track or have the conductor ride the point of the movement. Petitioner did neither of these things, and ran over the derail.

**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.

**JAN 27 2011**

Issued in Chicago, IL on \_\_\_\_\_.



Richard M. McCord  
Chairman,  
Locomotive Engineer Review Board

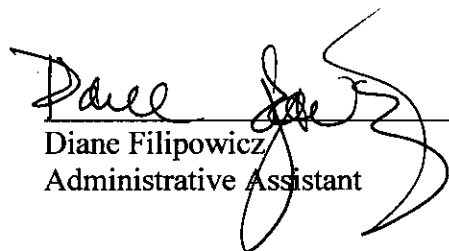
SERVICE LIST EQAL 2010-26

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. Ugarph  
228 12<sup>th</sup> Avenue South  
Clinton, IA 52732

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

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

**JAN 27 2011**  
\_\_\_\_\_  
Date

enc: Post LERB Memo

cc: FRA DOCKET EQAL 2010-26

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Mr. James A. Ugarph  
228 12th Avenue South  
Clinton, IA 52732

**EQAL 2010-26**

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Manager, Engineering Certification & Licensing  
Union Pacific Railroad Company  
1400 Douglas Street, Mailstop 1010  
Omaha, NE 68179

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Omaha, NE 68179

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