

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

Locomotive Engineer Review Board

Decision Concerning
Southeastern Pennsylvania Transportation Authority's
Revocation of Mr. T. R. Sanchious'
Locomotive Engineer Certification

FRA Docket Number EQAL 2010-27

Decision

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of the Southeastern Pennsylvania Transportation Authority (SEPTA) to revoke Mr. T.R. Sanchious' (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 21, 2010, while operating Extra Wire Train, Locomotive No. 61, Petitioner allegedly occupied Main Track 1 without authority on the Norristown Line. Tr. Vol. I at 8. See also, Pet. at 3.

SEPTA 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 February 5, 2010 and February 23, 2010, and SEPTA notified Petitioner of the revocation by letter dated March 19, 2010. Pet. Ex. 1.

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 SEPTA's decision to revoke Petitioner's certification. The petition was received on July 13, 2010 and was timely filed. The petition asserts that the revocation was improper because:

- (1) Petitioner was denied a fair and impartial hearing because the hearing officer did not allow him to enter into the record the testimony of SEPTA manager James Manley and decisions in three other cases involving similar circumstances. Pet. at 5-8;
- (2) During the hearing, SEPTA referenced Petitioner's failure to conduct a proper job briefing, yet he was never charged with this rule violation. Pet. at 8;

- (3) When the incident occurred, Petitioner was relying on the conductor to be his eyes during the movement. Pet. at 19. See also, Pet. at 22. The conductor had plenty of time and access to different radios while controlling the shoving move to the Pennsy Connection. The train operated at restricted speed for nearly a mile while shoving towards the derail and switch for a minimum of ten minutes, and stopped at the derail and switch. Pet. at 25. See also, Tr. Vol. I at 173. The Petitioner reasonably assumed, as any engineer would, that the conductor had many opportunities to contact the SEPTA-3 dispatcher prior to authorizing the train past the derail and switch, and the conductor should have remembered that he had to contact SEPTA-3 before proceeding. Pet. at 8-12. See also, Pet. at 22-26; and
- (4) The incident had no potential impact on safety. Pet. at 20.

SEPTA's Response

Pursuant to 49 C.F.R. § 240.405(b), (c), a copy of the petition was sent to SEPTA on August 3, 2010, and the railroad was afforded an opportunity to comment. By letter dated September, 30 2010, SEPTA responded to Petitioner's assertion, as follows:

- (1) Petitioner's representative agreed to produce written documentation to establish the relevance of Mr. Manley's testimony. However, Petitioner never produced any documentation, nor did Petitioner call Mr. Manley as a witness in the second hearing proceeding. Resp. at 3-4. Additionally, the three cases Petitioner wanted to introduce into evidence were reviewed by the hearing officer during the February 23, 2010 hearing and deemed irrelevant to the case. Resp. at 4;
- (2) The basis for Petitioner's revocation is occupying the main track without authority. This basis is stated in the Notice of Suspension and reiterated by the hearing officer at the hearing. Petitioner was not charged with failure to conduct a proper job briefing because he was charged appropriately with occupying main track without authority. Resp. at 15;
- (3) Petitioner's case is not about failing to protect the point during a shove and riding over a derail and switch. Instead, the case is about occupying main track without authority, for which Petitioner has some responsibility for the violation. Throughout the entire movement, Petitioner had been personally involved in all radio communications with the train dispatcher. Inexplicably, when permission was needed to travel on the main line, Petitioner decided to rely on the conductor to ensure that permission was granted. No certified locomotive engineer who had previously handled all radio communications between the train and the train dispatcher should reasonably assume another crew member would spontaneously take it upon him or herself to call the train dispatcher to acquire operating authority. Resp. at 10; and
- (4) Under §240.307(i)(2), a railroad *may* decide not to revoke an engineer's certification if

the violation is minimal in nature or had no direct or potential effect on rail safety. Section 240.307(i)(2) does not require a railroad to refrain from revoking an engineer's certification if there is no potential impact on safety. Nevertheless, unauthorized track occupancy is not a minimal violation. There is a potential for an accident anytime there is unauthorized access to main track, as in this case. Resp. at 13.

Board's Determinations

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

- (1) On January 21, 2010, while operating Extra Wire Train, Locomotive No. 61, Petitioner occupied Main Track 1 without authority on the Norristown Line. Tr. Vol. I at 8. See also Pet. at 3;
- (2) The crew began their tour of duty at the Wayne Electric Car Shop. The crew operated the Extra Wire Train southward to the CHW Branch to perform maintenance in an out-of-service area. The train consisted of a locomotive at the south end of the train, two flat cars and a converted coach on the north end of the train. After completing work, the crew received permission from the SEPTA-6 dispatcher to return to the Wayne Electric Car Yard via the Pennsy Connection. Pet. at 13 and 15;
- (3) Petitioner remained in the locomotive on the south end of the train during the northward movement back to the yard. The conductor informed Petitioner that he would walk to the north end of the train and protect the shoving move through the Lehigh Interlocking, the Pennsy Connection, and onto the Norristown Line. Petitioner shoved the train to the derail on the Pennsy Connection under the direction of his conductor. When the train arrived at the derail, the conductor instructed Petitioner to stand by, whereupon Petitioner waited approximately 10 minutes. Pet. at 15-16;
- (4) The conductor then directed Petitioner to operate the train from the Pennsy Connection onto the Norristown Line. The Petitioner changed radio frequency to SEPTA's road channel (90/32) and operated past the derail and through the switch onto the Norristown Line under the direction of the conductor. Petitioner stopped the train once he passed the switch and noticed the switch was damaged. The crew notified the SEPTA-3 dispatcher, who informed the crew that they did not have permission to be out on the Norristown Line. The incident was investigated and the conductor was removed from service. At that point, the investigating supervisor took no exception to Petitioner's actions. Petitioner was released from service at approximately 9:30 am. Pet. at 16-17;
- (5) At approximately 6:20 pm, Petitioner received a call and was notified that he was also being charged in the incident. Pet. at 17. By letter dated January 26, 2010, Petitioner was notified that his certificate was suspended pending a hearing into the matter. SEPTA Ex. 2; and
- (6) SEPTA 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 February 5, 2010 and February 23, 2010, and SEPTA notified Petitioner of the revocation by letter dated March 19, 2010. Pet. Ex. 1.

Analysis of the Petition

Petitioner’s first, second and fourth assertions present procedural issues. Pursuant to its reviewing role, the Board will “determine whether substantial harm was caused the petitioner by virtue of the failure to adhere to the dictated procedures for making the railroad’s decision. A finding of substantial harm is grounds for reversing the railroad’s decision.” See Fed. Reg. 18982, 19001 (April 9, 1993). To establish grounds upon which the Board may grant relief, Petitioner must show: (1) that procedural error occurred, and (2) the procedural error caused substantial harm. *Id.* The Board is not persuaded by any of Petitioners’ procedural arguments and finds that no procedural errors occurred.

First, Petitioner asserts that he was denied a fair and impartial hearing because the hearing officer did not allow him to enter into the record the testimony of SEPTA manager James Manley and the decisions in three other cases involving similar circumstances. Pet. at 5-8. At the February 5, 2010 hearing, Petitioner’s attempt to take the testimony of Mr. Manley was denied by the hearing officer. During an off-the-record conference at the same hearing, Petitioner, his representative, and the hearing officer agreed to allow Petitioner to submit written documentation to the hearing officer at a later time to address the relevancy of Mr. Manley’s testimony. Tr. Vol. I at 118. However, that documentation was never produced by Petitioner. Resp. at 3-4. Petitioner has offered no evidence that his documentation was rejected by the hearing officer, nor has he offered a reason for why it was never produced in the first place.

In addition, the Board finds that the hearing officer fairly rejected the admission of the decisions in three similar cases that Petitioner wished to admit at the February 23, 2010 hearing. The Board finds that these cases were irrelevant to the facts of the instant case because the cases deal with facts where a conductor failed to protect a shove. The cases do not address facts where a miscommunication between an engineer and a conductor occurred when they were receiving permission to occupy main track. Thus, the Board finds that Petitioner was given a fair and impartial hearing, and that no procedural errors occurred.

Second, Petitioner argues that, during the hearing, SEPTA referenced Petitioner’s failure to conduct a proper job briefing yet he was never charged with this rule violation. The Board notes that the basis for Petitioner’s revocation is occupying the main track without authority, which is proper in this case. This basis for revocation was stated in the Notice of Suspension and reiterated by the hearing officer at the hearing. Petitioner was not charged with failure to conduct a proper job briefing because he was appropriately charged with occupying main track without authority.

Third, Petitioner argues that his occupation of the main track without authority had no potential impact on safety and that under § 240.307(i)(2) SEPTA could not revoke his certification. Pet.

at 20. The Board agrees with SEPTA that, under § 240.307(i)(2), a railroad may decide not to revoke an engineer's certification if the violation is minimal in nature or had no direct or potential effect on rail safety, but it is up to the railroad to make that determination. In this instance, SEPTA concluded that Petitioner's actions did have an effect on rail safety, so it revoked Petitioner's certification. The Board finds that SEPTA's revocation was proper in this case.

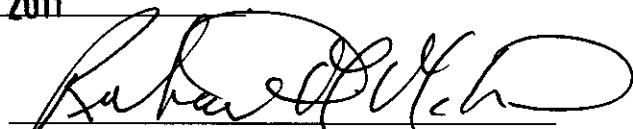
Petitioner's final assertion raises an intervening cause argument. In determining whether SEPTA's revocation decision was proper under FRA's regulations, the Board considers whether "an intervening cause prevented or materially impaired the locomotive engineer's ability to comply with the railroad operating 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). Petitioner argues that when the incident occurred, he was relying on the conductor to be his eyes during the movement. Pet. at 19. See also, Pet. at 22. Petitioner believes that he reasonably assumed, as any engineer would, that the conductor had many opportunities at his disposal to contact the SEPTA-3 dispatcher prior to authorizing the train past the derail and switch, and the conductor should have remembered that he had to contact SEPTA-3 before proceeding. Pet. at 8-12. See also, Pet. at 22-26. In other words, the conductor's improper actions caused Petitioner to occupy the main track without authority.

The Board finds that Petitioner's assertion is without merit. Petitioner's violation is not about the conductor failing to protect the point during a shove and riding over a derail and switch. The Board recognizes that the conductor was on the point and that the conductor was responsible for the movement, since Petitioner could not see the track ahead. However, the incident in question regarding Petitioner's revocation involves whether Petitioner properly obtained authority to occupy the main track, and more specifically, should Petitioner have assumed that his conductor obtained that authority without personally verifying that the authority was properly obtained. The Board finds that Petitioner should not have relied on the conductor alone to get permission to occupy main track. Petitioner was also responsible for obtaining that authority, or at least double checking that the authority was properly granted. As such, SEPTA's assessment that Petitioner operated without proper authority on main track was 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 27 2011**



Richard M. McCord
Chairman,
Locomotive Engineer Review Board

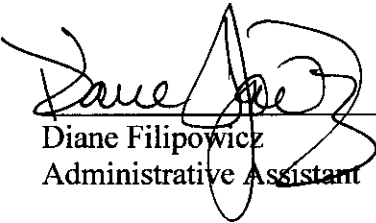
SERVICE LIST EQAL 2010-27

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. Terrence R. Sanchious
1439 N. Allison Street
Philadelphia, PA 19131-3907

Mr. Richard G. Dixon
38 Lanfair Rd.
Cheltenham, PA 19012

Mr. T. J. Spratt
Administrator, Locomotive Engineer Certification Program
Southeastern Pennsylvania Transportation Authority
1234 Market St.
Philadelphia, PA 19107


Diane Filipowicz
Administrative Assistant

JAN 27 2011

Date

enc: Post LERB Memo

cc: FRA DOCKET EQAL 2010-27

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
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1. Article Addressed to: <p style="text-align: center;">Mr. Terrence R. Sanchious 1439 N. Allison Street Philadelphia, PA 19131-3907</p>	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	
2. Article Number <i>(Transfer from service label)</i> EGAL 2010-27	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: <p style="text-align: center;">Mr. Richard G. Dixon 38 Lanfair Rd. Cheltenham, PA 19012</p>	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	
2. Article Number <i>(Transfer from service label)</i> EGAL 2010-27	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	
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1. Article Addressed to: <p style="text-align: center;">Mr. T. J. Spratt, Administrator Locomotive Engineer Certification Program SEPTA 1234 Market St. Philadelphia, PA 19107</p>	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	
2. Article Number <i>(Transfer from service label)</i> EGAL 2010-27	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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