

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

Locomotive Engineer Review Board

Order Concerning  
Union Pacific Railroad Company's  
Denial of Mr. G. M. Alexander's  
Locomotive Engineer Certification

**FRA Docket Number EQAL-2010-30**

---

**Background**

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the petition seeking review of the Union Pacific Railroad Company's (UP) decision to deny the locomotive engineer certification (certification) of Mr. G. M. Alexander (Petitioner) 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 determines that there is insufficient information in the record to render a decision at this time.

**Board's Determination**

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

- (1) On July 23, 2010, Petitioner filed a petition requesting that FRA review UP's February 3, 2010 decision to deny Petitioner's certification. Petitioner requests the Board find UP's decision was improper.
- (2) Petitioner indicates that he was originally certified by UP on July 8, 2005. See Pet. at 1.
- (3) UP stated that Petitioner's certification was to expire February 17, 2010. Pet. Exhibit G-7.
- (4) The record is lacking in that it does not clearly establish when Petitioner was last certified and when that certification was due to lapse.
- (5) The record reflects UP's determination that Petitioner failed three skills performance tests administered on September 2, 2009, October 16, 2009, and December 9, 2009, forming the basis for the denial of Petitioner's certification. Pet. Exhibit G-4 - G-6. The record reflects that the first two

tests were cut short and Petitioner was not allowed to finish the tests; however, UP failed to provide copies of procedures or otherwise explain how UP's supervisors are instructed to score or stop a test that is in progress.

- (6) Regarding the third skills performance test, the record also fails to illuminate exactly how UP's supervisors scored the test and thus prove how the test result must be considered a failure.
- (7) The Board requires additional evidence to bring closure to this case.

### **Order**

To ensure that the requirements of 49 C.F.R. § 240.219(a) have been complied with, the Board orders UP to provide the following:

- (1) Copies of any and all records required to be kept pursuant to 49 C.F.R. Part 240 that illuminates Petitioner's entire history as a certified locomotive engineer. The records requested must include any information indicating when Petitioner was initially certified, recertified, or had certification lapse due to medical or other reasons. The records requested must also include any information indicating when Petitioner had been denied certification or recertification, or had certification revoked.
- (2) Copies of any and all procedures provided to UP's supervisors explaining how to score a test, or when to stop a test in progress, that was in effect on the dates of Petitioner's three skills performance skills tests. If no procedures were in effect, an admission that no procedures were in effect and an explanation for how UP's supervisors were expected to score these tests.
- (3) A more specific explanation than what has been provided to the Board to date regarding exactly how Petitioner's alleged failures during the three tests were scored and how UP determined that the scores were test failures.

If UP cannot provide the requested information, the Board orders that UP explain why it was unable to provide the information. If UP fails to provide any of the requested information or explanation, in full or in part, the Board may draw inferences relating to the information requested in the light most favorable to the Petitioner.

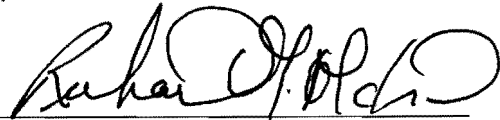
UP shall have thirty days from the date of receipt of this order to file a submission to the Docket Clerk, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, D.C. 20590 and to serve a copy of the submission to those persons shown on the attached service list. Petitioner shall have thirty days from the date of receipt of UP's submission to file a response with FRA's Docket Clerk and to serve a copy of the submission to those persons shown on the attached service list. If Petitioner does not intend to file a substantive response, the Board requests that Petitioner notify the Board's

Counsel, Mr. Alan Nagler, at (202) 493-6049 or [alan.nagler@dot.gov](mailto:alan.nagler@dot.gov), so that the Board may expedite review of the petition.

The Board will not consider documents, correspondence, comments, or any other submissions as evidence except that which is requested. It is recommended that each party file its submission and serve all parties in a manner in which proof of filing or service is retained.

If either party has any questions, please contact Mr. Nagler.

Issued in Chicago, Illinois on           **MAY 09 2011**          .



Richard M. McCord  
Chairman,  
Locomotive Engineer Review Board

**SERVICE LIST EQAL 2010-30**

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

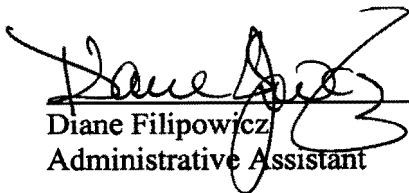
**SENT CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. G. M. Alexander  
313 SE 21<sup>st</sup> Street  
Troutdale, OR 97060

Mr. Jeff Cubley  
VLC UTU  
4655 SW 189<sup>th</sup> Place  
Aloha, OR 97007  
\\

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 68179-1030

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

**MAY 09 2011**

\_\_\_\_\_  
Date

cc: FRA Docket EQAL 2010-30

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		A. Signature <span style="float: right;"><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</span> <b>X</b>	
1. Article Addressed to:		B. Received by (Printed Name)	C. Date of Delivery
Ms. Christine Hampton Union Pacific Railroad Company 1400 Douglas Street, Mailstop 1030 Omaha, NE 68179-1030  <b>EQUAL 2010-30</b>		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 (Transfer from service label)		3. Service Type	
7008 3230 0002 3925 4725		<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.	
PS Form 3811, February 2004		Domestic Return Receipt	
		102595-02-M-1540	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		A. Signature <span style="float: right;"><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</span> <b>X</b>	
1. Article Addressed to:		B. Received by (Printed Name)	C. Date of Delivery
Mr. Lawrence Brennan, Jr. Manager, Engineering Certification & Licensing Union Pacific Railroad Company 1400 Douglas Street, Mailstop 1010 Omaha, NE 68179  <b>EQUAL 2010-30</b>		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 (Transfer from service label)		3. Service Type	
7008 3230 0002 3925 4718		<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.	
PS Form 3811, February 2004		Domestic Return Receipt	
		102595-02-M-1540	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		A. Signature <span style="float: right;"><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</span> <b>X</b>	
1. Article Addressed to:		B. Received by (Printed Name)	C. Date of Delivery
Mr. Jeff Cubley VLC UTU 4655 SW 189th Place Aloha, OR 97007  <b>EQUAL 2010-30</b>		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 (Transfer from service label)		3. Service Type	
7008 3230 0002 3925 4701		<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.	
PS Form 3811, February 2004		Domestic Return Receipt	
		102595-02-M-1540	

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	A. Signature <b>X</b> <span style="float: right;"><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</span>	
1. Article Addressed to:  <p style="text-align: center;">Mr. G. M. Alexander 313 SE 21st Street Troutdale, OR 97060</p>	B. Received by ( <i>Printed Name</i> )	C. Date of Delivery
2. Article Number <i>(Transfer from service label)</i>	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
<b>EQAL 2010-30</b>	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? ( <i>Extra Fee</i> ) <input type="checkbox"/> Yes	
7008 3230 0002 3925 4695		