

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

Locomotive Engineer Review Board

Decision Concerning  
CSX Transportation, Inc.'s  
Revocation of Mr. D.J. Zessin's  
Locomotive Engineer Certification

**FRA Docket Number EQAL 2010-37**

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**Decision**

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of CSX Transportation, Inc. (CSXT) to revoke Mr. D.J. Zessin'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 grants Mr. Zessin's petition for the reasons set forth below.

**Background**

On May 12, 2010, at approximately 9:50 a.m., while operating Assignment Y44511, Petitioner allegedly failed to perform a transfer train air brake test in violation of CSXT Air Brake Train Handling Rule 5206. At the time of the alleged failure, the train crew, consisting of Petitioner and a conductor, was observed by two CSXT supervisors as they switched cars at Carter Lee Lumber Company in the vicinity of MP QIB 2.7 on the Indianapolis Belt. Tr. at 9.<sup>1</sup> The crew set off one car, picked up four cars, and then departed the facility. The crew traveled approximately six tenths of a mile, reportedly with the intent to double its four cars to the rest of their train which was left on the West Main West Track. Tr. at 23, 28. However, prior to being able to double their cars to the rest of their train, the crew expired under the Hours of Service Law, tied down the equipment, and taxied to the yard office. Tr. at 24, 29

CSXT charged Petitioner with a violation of 49 C.F.R. § 240.117 for the failure "to make a transfer air brake test when operating train on dispatcher controlled track." Tr. at 2. An investigation and hearing was held on May 19, 2010, and CSXT subsequently notified Petitioner by letter dated June 16, 2010, that as a result of his violation of CSXT Air Brake Train Handling Rule 5206 (Rule 5206), his certification was revoked for a period of 30 days. See Attachment 1 to CSXT response letter to FRA dated December 15, 2010.

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<sup>1</sup> "Tr." refers to the transcript of the relevant investigation which Petitioner submitted with his petition.

### **Petitioner's Assertions**

The United Transportation Union (UTU) filed a timely petition with FRA on behalf of Petitioner, requesting that the Board review CSXT's decision to revoke Petitioner's certification. The petition asserts that the revocation was improper because Petitioner was not engaged in a transfer train movement at the time of the supervisors' observation. Instead, Petitioner asserts that he and his conductor were in the process of assembling their train and in accordance with normal operating procedures, once their train was assembled, they would perform the transfer test prior to departing for Hawthorne Yard. Petitioner asserts that performing the transfer train test upon departure from the lumber facility and before their train had been completely assembled is not required by Rule 5206. In support of this assertion, noting that Rule 5206 does not specify that a transfer train test must be made before entering certain types of tracks, Petitioner asserts that Mr. Workman's (one of the CSXT supervisors that observed the movements in question) stated position that because the movement from the lumber facility was on Dispatcher Controlled Track, a transfer train test was required before the crew departed the facility, was erroneous. Petitioner further notes that he moved the cars approximately six tenths of a mile and the only limitation on movement distances referenced in Rule 5206 is not to exceed twenty miles.

Petitioner further asserts that this type of movement is made all the time throughout the Indianapolis Terminal where this incident occurred and no brake tests are expected. Noting that the supervisors reported observing the crew for approximately one and a half hours, Petitioner asserts that the supervisors were "looking for something to charge them with."

### **Railroad's Response**

Pursuant to 49 C.F.R. § 240.405(b), (c), a copy of the petition was sent to CSXT, and the railroad was afforded an opportunity to comment. CSXT submitted a timely response to the petition in which it asserts that Rule 5206 required the petitioner to perform a transfer air brake test on the cars added to their train at the customer location before their movement could begin. Accordingly, CSXT asserts that revocation of Petitioner's certification was justified in accordance with 49 CFR § 240.117(e)(3) because he failed to comply with the railroad's operating rules and practices that involve "[f]ailure to adhere to procedures for the safe use of train or engine brakes when the procedures are required for compliance with the initial terminal, intermediate terminal, or transfer train and yard test provisions of 49 CFR Part 232."

### **Board's Determinations**

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

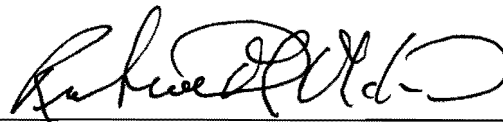
1. On May 12, 2010, at approximately 9:50 a.m., Petitioner and his conductor operating Assignment Y44511 in the vicinity of MP QIB 2.7 on the Indianapolis Belt at the Carter Lee Lumber Company were observed by CSXT supervisors as they set off one car in the facility and pulled four cars from the facility. Tr. at 9, 23. Petitioner did not perform any air brake test before departing the facility.

2. Petitioner traveled approximately six tenths of a mile towards the rest of their train which was left on the West Main West Track. Tr. at 23, 28. Petitioner intended to double back and couple the four cars pulled from the lumber facility to the cars already on West Main West Track to complete assembly of his train to be transported to Hawthorne Yard. Tr. at 23-26, 28-30.
3. Before Petitioner could complete assembly of his train, both he and his conductor expired under the Hours of Service Law. Tr. at 24-25. Accordingly, Petitioner and his conductor tied down their equipment on the storage track of the West Main West track and taxied to the yard office. Tr. at 24, 29.
4. Petitioner's movement from the lumber facility to the storage track of the West Main West track constituted a switching movement and not a train movement. Accordingly, pursuant to 49 CFR Part 232, no air brake test was required prior to the move. With certain exceptions, FRA defines a "train movement" (which would necessitate the performance of an air brake test) as "five or more cars coupled together that are hauled a distance of at least one mile without a stop to set off or pick up a car and not moving for the purpose of assembling or disassembling a train." See definition of "[s]witching service" in FRA's Office of Safety Assurance and Compliance, Motive Power & Equipment Compliance Manual (Nov. 1, 2007). Movements of less than one mile may be considered train movements depending on certain factors (e.g., the purpose of the movement is for other than assembling/disassembling a train; the distance traveled without a stop to set out or pick up cars; the number of cars hauled; and the hazards associated with the particular route traveled). There is no evidence that any of these factors are relevant in this situation. Thus, the movement at issue was a switching movement and did not require a brake test to be performed.
5. Rule 5206 offers no clear guidance to show that transfer tests are required before leaving each industry regardless of where the balance of a crew's train was left. CSXT offered no evidence of any guidance that would inform crews of a requirement to perform a brake test during these types of moves.

### **Conclusion**

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

Issued in Chicago, IL on MAY 09 2011.



Richard M. McCord  
Chairman,  
Locomotive Engineer Review Board

**SERVICE LIST EQAL 2010-37**

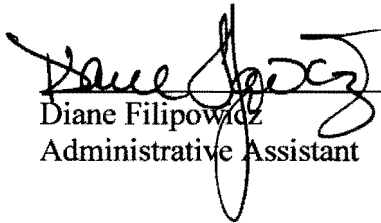
A copy of the Locomotive Engineer Review Board decision in this matter has been sent by certified mail and return receipt requested to each person shown below.

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

Mr. D.J. Zessin  
1329 Oxford Street  
Indianapolis, IN 46201-1219

Mr. R.C. Smith, Local Chairman  
United Transportation Union  
8336 Thorn Bend Drive  
Indianapolis, IN 46278-5049

Michael S. Burns, Esq.  
CSX Transportation, Inc.  
500 Water Street, J150  
Jacksonville, FL 32202

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

**MAY 09 2011**

\_\_\_\_\_  
Date

enc: Post LERB Memo

cc: FRA DOCKET EQAL 2010-37

## SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Michael S. Burns, Esq.  
CSX Transportation, Inc.  
500 Water Street, J150  
Jacksonville, FL 32202

EQAL 2010-37

2. Article Number

(Transfer from service label)

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Mr. R.C. Smith, Local Chairman  
United Transportation Union  
8336 Thorn Bend Drive  
Indianapolis, IN 46278-5049

EQAL 2010-37

2. Article Number

(Transfer from service label)

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Mr. D.J. Zessin  
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Indianapolis, IN 46201-1219

EQAL 2010-37

2. Article Number

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