

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

Locomotive Engineer Review Board

Decision Concerning
CSX Corporation's
Revocation of Mr. P. L. Fisher's
Locomotive Engineer Certification

FRA Docket Number EQAL-2010-39

Decision

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of the CSX Corporation (CSX) to revoke Mr. P. L. Fisher'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 determines that CSX's decision to revoke Petitioner's certification was proper for the reasons set forth below.

Background

On July 12, 2010, while operating Train N67207, Petitioner allegedly operated into an overlapping track warrant, without permission at Buckingham Branch Railroad, (BBRR) milepost (MP) 134. CSX asserts that Petitioner violated Federal Regulation 49 C.F.R. § 240.117(e)(4), prohibiting Petitioner from occupying track without proper authority when he failed to comply with Operating Rules 6.3 and 14.5, which required Petitioner to receive permission from the other employee listed on the track warrant prior to entering overlapping track warrant limits.

The train crew consisted of the Petitioner and a conductor. The crew was called to operate train N67207 from MP CA 83, Richmond, VA. to MP CA 278 Clifton Forge, VA. Between MPs CA 85.5 - 117.9 and CA 111.9 - 159.3, the crew had authority for movement under track warrant control issued by the BBRR Rail Traffic Controller (RTC). Between MP 134 and MP 136 track warrant limits were occupied by another employee, Mr. Martin. The crew entered the overlapping track warrant limits at MP 134 without contacting Mr. Martin.

By letter dated August 23, 2010, Petitioner was notified that his certificate was revoked for occupying track without proper authority. A petition was timely filed with FRA on September 28, 2010, by the Brotherhood of Locomotive Engineers and Trainmen on behalf of Petitioner, requesting that FRA review CSX's decision to revoke Petitioner's certification. Petitioner asserts that the revocation was improper because:

- (1) CSX misapplied 49 C.F.R. § 240.117(e)(4) as it pertains to occupying main track or segment of track without authority. The fact that Petitioner had a track warrant from the BBRR RTC gave him authority to enter the track and also told him how to operate, at restricted speed. Therefore, CSX has not met its burden of proof.
- (2) Track warrant control issued by the RTC was an intervening cause.
- (3) There was never a direct or potential adverse effect on rail safety and CSX should have used its discretion as provided in 49 C.F.R. § 240.307(i)(2) to allow Petitioner to keep his certification.

Pursuant to 49 C.F.R. § 240.405(b) and (c), a copy of the petition was sent to CSX, and the railroad was afforded an opportunity to comment. CSX's response was received by FRA on, January 18, 2011.

CSX' Response

CSX responded to Petitioner's assertions by arguing that:

- (1) Petitioner operated his train past MP 134 without proper authority. In fact, Petitioner and his conductor testified that they entered the limits of employee, Mr. Martin, at MP 134 without contacting him for permission. See Tr. at 29, 30, 37, 39.
- (2) The intervening cause exception applies only when it would prevent or materially impair the locomotive engineer's ability to comply with the Federal regulations. In this case, the track warrant did not prevent Petitioner from adhering to the BBRR operating rules and complying with the Federal regulations. It was Petitioner's apparent misunderstanding of those rules that resulted in noncompliance with the Federal regulations.
- (3) Section 240.307(i)(2) does not require CSX to exercise its discretion by permitting Petitioner to keep his certification when Petitioner violates the Federal regulations. Moreover, clearly this type of violation is one which could have resulted in an injury since Petitioner was operating his train where workers were present.

Analysis of the Petition

Petitioner's first assertion raises a factual issue. Accordingly, "[w]hen considering factual issues, the Board will determine whether there is substantial evidence to support the railroad's decision, and a negative finding is grounds for dismissal." 58 Fed. Reg. 18982, 19001 (April 9, 1993). Petitioner asserts that the track warrant from the BBRR RTC gave him authority to enter the track at MP 134 at restricted speed. Operating Rules 6.3 and 14.5, require Petitioner to receive

SERVICE LIST EQAL 2010-39

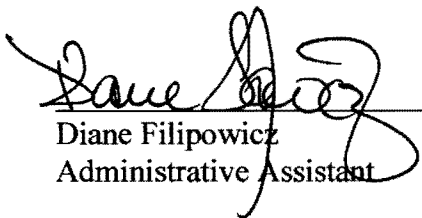
A copy of the Locomotive Engineer Review Board decision in this matter has been sent by certified mail to each person shown below.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

P. L. Fisher
P.O. Box 35
Iron Gate, VA 24448-0035

R. H. Tolley
Local Chairman Committee of Adjustment Division 38
BLE&T
745 High Street
Clifton Forge, VA 24422

Sarah E. Hall
Associate General Counsel
Corporate and Transportation Law
CSX Corporation
500 Water Street, J150
Jacksonville, FL 32202



Diane Filipowicz
Administrative Assistant

MAY 09 2011

Date

enc: Post LERB Memo

cc: FRA Docket EQAL 2010-39

SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Sarah E. Hall, Associate General Counsel
 Corporate and Transportation Law
 CSX Corporation
 500 Water Street, J150
 Jacksonville, FL 32202

EQAL 2010-39

2. Article Number
(Transfer from service label)

7008 3230 0002 3925 4787

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1. Article Addressed to:

R. H. Tolley, Local Chairman
 Committee of Adjustment Division 38
 BLE&T
 745 High Street
 Clifton Forge, VA 24422

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2. Article Number
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1. Article Addressed to:

P. L. Fisher
 P.O. Box 35
 Iron Gate, VA 24448-0035

EQAL 2010-39

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