

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

Locomotive Engineer Review Board

**Review and Determinations Concerning the
Union Pacific Railroad Company's Decision To
Revoke Mr. W. J. Huber's
Locomotive Engineer Certification**

FRA Docket Number EQAL 2010-47

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 the locomotive engineer certification (certification) of W. J. Huber 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 dismisses the petition, without prejudice, for the reasons set forth below.

Background

On September 1, 2010, while operating Train MWMWM-01, Petitioner allegedly exceeded the maximum authorized speed by more than 10 miles per hour in violation of 49 C.F.R. §240.117(e)(2). On September 24, 2010, Petitioner was notified that his certification was revoked for one month.

On November 4, 2010, the Brotherhood of Locomotive Engineers and Trainmen (BLET), on behalf of Petitioner, filed a petition requesting that FRA review UP's decision to revoke Petitioner's certification. The petition asserts that the revocation was improper.

Pursuant to 49 C.F.R. §240.405(b) and (c), a copy of the petition was sent to UP, and the railroad was afforded an opportunity to comment. UP's response was timely filed, and, as required by 49 C.F.R. §240.405(d)(2), provided Petitioner's representative with a copy of the material submitted to FRA.

UP's Response

UP reviewed the information in its case file and concluded that the incident was of a minimal nature and had no direct or potential effect on rail safety. Consequently, UP stated that it "is changing the record of petitioner to reflect no revocation."

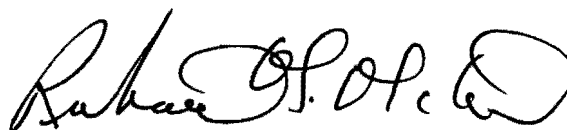
Locomotive Engineer Review Board's Determination

On January 20, 2011, FRA Counsel to the Board sent a letter to Petitioner and his BLET representative regarding UP's response to the petition. FRA asked Petitioner to complete and return an attachment, indicating whether Petitioner wished to pursue or withdraw his petition. In the letter, FRA wrote that "[a]ssuming UP has corrected its records accordingly, there is no revocation incident for the Board to review; if the Board were to review the petition at this time, it would have no choice but to dismiss the petition as UP indicates that there would not be a revocation incident for the Board to review. Thus, FRA requests that [Petitioner] complete the one page attachment." The letter was sent via certified mail, return receipt requested. The receipts indicate that both Petitioner and his BLET representative received the letter. FRA Counsel also offered to accept an e-mail response. FRA did not receive a response from Petitioner or his BLET representative .

Based on the lack of response, the Board hereby dismisses the petition, without prejudice, for lack of jurisdiction in accordance with the provisions of 49 C.F.R. Part 240. The petition fails to articulate a dispute concerning Petitioner's certification status. See § 240.401(a)(stating that the Board may only hear petitions addressing denied certification, denied recertification, or revocation of certification).

The Board is dismissing the petition "without prejudice" to recognize that if UP does revoke Petitioner's certification based on the September 1, 2010 incident, Petitioner may file a new petition requesting the Board's review pursuant to 49 CFR §240.403 (Petition requirements).

Issued in Chicago, IL on APR 04 2011



Richard M. McCord
Chairman, Locomotive
Engineer Review Board

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.


SERVICE LIST EQAL 2010-47

Mr. W. J. Huber
4595 Aurora Ave.
Winnemucca, NV 89445

Mr. Daniel W. Hannah
GC BLET
404 N. 7th St., Ste. A
Colton, CA 92324

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 Specialist

APR 04 2011

Date

enc: Post LERB Memo

cc: FRA Docket EQAL 2010-47

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- 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:



Mr. W.J. Huber
4595 Aurora Ave.
Winnemucca, NV 89445

EQAL 2010-47

2. Article Number
(Transfer from service label)

7008 3230 0002 3925 4596

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

- Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- 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:



Mr. Daniel W. Hannah
GC BET
404 N. 7th St., Suite A
Colton, CA 92324

EQAL 2010-47

2. Article Number
(Transfer from service label)

7008 3230 0002 3925 4602

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

- Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- 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:



Mr. Lawrence Brennan, Jr. UP
Manager, Engineering Certification & Licensing
1400 Douglas Street, Mailstop 1010
Omaha, NE 68179

EQAL 2010-47

2. Article Number
(Transfer from service label)

7008 3230 0002 3925 4619

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery


D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service type

- Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ 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. 	A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee X	
1. Article Addressed to:  Ms. Christine Hampton Union Pacific Railroad Company 1400 Douglas Street, Mailstop 1030 Omaha, NE 68179 EQUAL 2010-47	B. Received by (Printed Name)	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	
	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	
	7008 3230 0002 3925 4626	