

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

Locomotive Engineer Review Board

Decision Concerning  
National Railroad Passenger Corporation's  
Revocation of Mr. R. G. McQueen's  
Locomotive Engineer Certification

**FRA Docket Number EQAL 2010-51**

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**Decision**

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of the National Railroad Passenger Corporation (Amtrak) to revoke Mr. R. G. McQueen'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 denies the petition for the reasons set forth below.

**Background**

On June 8, 2010, at approximately 5:25 a.m., while working as an engineer on passenger train No. 2, Petitioner allegedly allowed his train to pass a stop signal without authority at Control Point (CP) LF-964, on the Union Pacific Railroad Company's (UP) Terminal Subdivision, on Main Track No. 1, eastbound, at Houston Terminal. See Pet. at 26, 34.

Amtrak charged Petitioner with a violation of 49 C.F.R. § 240.117(e)(1) – “failure to control a locomotive or train in accordance with a signal indication, excluding a hand or a radio signal indication or a switch, that requires a complete stop before passing it.” An investigation and hearing was held on July 20, 2010, and Amtrak notified Petitioner of the revocation by letter dated July 27, 2010.

**Petitioner's Assertions**

Petitioner filed a petition with FRA, requesting that the Board review Amtrak's decision to revoke Petitioner's certification. The petition was received on November 18, 2010 and was timely filed. The petition asserts that the revocation was improper because:

- (1) Petitioner was denied a fair and impartial hearing. The hearing officer was prejudiced toward Petitioner. The hearing officer had previously made a derogatory statement that he would not believe a word that came out of

Petitioner's mouth. See Pet. at 1-3.

- (2) Petitioner was denied a fair and impartial hearing. A witness that may have provided exculpatory testimony was not called. UP Manager of Operating Practices Vogel investigated the incident and interviewed the crew. He could have given first person testimony regarding his conversations with the crew, the UP dispatcher, the corridor manager, and the signal maintainers. See Pet. at 3-4.
- (3) Petitioner was denied a fair and impartial hearing. Amtrak failed to call the requested UP Signal Department employee who was on the scene and investigated the incident. This employee could have testified as to the confusion following the incident regarding signal downloads and could have testified to statements and reports made to Manager of Operating Practices Vogel and to Petitioner at the scene. Instead Amtrak called Mr. Kleckley, UP Manager Signal Maintenance, who was not present on the scene during the investigation. The signal downloads entered into evidence by Mr. Kleckley were different than what was said by the signal employees at the scene that day, bringing the credibility of the signal downloads into question. See Pet. at 5-6, 13.
- (4) Petitioner was not operating the locomotive at the time of the incident. Engineer Picon, qualifying on the territory, was operating the train. See Pet. at 7.
- (5) Petitioner observed that signal CP LF-964 was displaying an approach indication. Petitioner never observed a stop indication at CP LF-964. When approaching CP LF-964, Petitioner heard the crew on a westbound train on Track 2 suggest that the signal was "flip-flopping." See Pet. at 8. Petitioner stood up from his seat on the fireman's side of the engine and walked over to the engineer's side to observe the signal at the rear of the train. When he last observed the forward signal (CP LF-964), it was displaying an approach indication. If CP LF-964 changed to a stop indication, Petitioner was not in a position to see it. Petitioner relied on Engineer Picon's vigilance to continue observing CP LF-964. Engineer Picon said nothing about CP LF-964 until several hours later when the crew returned to the scene. At that time, Engineer Picon stated that the signal at CP LF-964 was red, but that the signal did not apply to his movement. See Pet. at 11, 14.
- (6) The signal download submitted into evidence by Amtrak was not true and correct and was not made contemporaneous to the incident. See Pet. at 18.

### **Amtrak's Response**

Pursuant to 49 C.F.R. § 240.405(b), (c), a copy of the petition was sent to Amtrak on

November 19, 2010, and the railroad was afforded an opportunity to comment. Amtrak did not respond to Petitioner's assertions.

### **Board's Determinations**

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

- (1) On June 8, 2010, at approximately 5:25 a.m., while working as the engineer on passenger train No. 2, Petitioner allowed his train to pass a stop signal without authority at CP LF-964, on UP's Terminal Subdivision, on Main Track No. 1, eastbound, at Houston Terminal. See Pet. at 26, 34; Tr. at 19, 24, 48, 53, and 65.
- (2) The train crew consisted of Petitioner, Engineer Picon, a conductor, and an assistant conductor. Just prior to the incident, the crew had received authority from the train dispatcher to pass a stop signal at CP LF-364 from Main Track No. 2 to Main Track No. 1.
- (3) The train was to pull east past CP LF-364 for head room so that it could shove west after it cleared CP LF-364.
- (4) Engineer Picon was qualifying on the territory and was operating at the time. Including this trip, Engineer Picon had been over this territory from San Antonio to Beaumont twice. See Tr. at 159. Engineer Picon testified that he had never made this particular move prior to the date of this incident. See Tr. at 66.
- (5) While Engineer Picon was pulling forward to clear CP LF-364, Petitioner thought that the train should be in the clear. Petitioner stood up from his seat on the fireman's side of the locomotive, walked over to Engineer Picon's side of the locomotive, opened the side door, and looked back to see where the rear of the train was located relative to CP LF-364. Petitioner testified that he could not see CP LF-964 from this location. See Tr. at 163.
- (6) Engineer Picon was operating at approximately 5 miles per hour at the time of the incident. See Tr. at 68.
- (7) Engineer Picon operated beyond CP LF-964 while Petitioner was looking back at the rear of the train. See Tr. at 65, 69.
- (8) Engineer Picon testified that he saw a stop signal displayed at CP LF-964 on Track No. 1 and did not receive permission to pass the signal. See Tr. at 65.
- (9) Engineer Picon never told Petitioner about seeing a red signal at CP LF-964 until several hours after the incident. See Tr. at 163, 169. Engineer Picon stated that the red signal did not apply to his movement. See Tr. at 71, 75, and 169. Engineer Picon testified that the signal displayed red and continued to remain red

as he passed it. See Tr. at 75.

- (10) A qualifying engineer was operating under Petitioner's direction. Petitioner was focused on the reverse movement that had not yet occurred, rather than focusing on the movement which resulted in passing a stop signal at CP LF-964. See Tr. at 87-90; Tr. Exhibit H.

### **Analysis of the Petition**

Petitioner's first, second, and third assertions involve procedural issues. Petitioner argues that he was denied a fair and impartial hearing, because the hearing officer was biased and because Amtrak failed to produce two UP employees, Manager of Operating Practices Vogel and the UP Signal Department Foreman, who had been involved in the incident investigation. See Pet. at 1-6. When considering procedural disputes, 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." 58 Fed. Reg. 18982, 19001 (Apr. 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 finds that Petitioner's first, second, and third assertions are without merit.

Petitioner's first assertion, that the hearing officer was biased against Petitioner, is based on an uncorroborated statement made by the hearing officer to a United Transportation Union local chairman in an unrelated matter. See Pet. at 2; Tr. Ex. 1. A review of the record indicates that the hearing officer conducted a fair hearing. Even if the hearing officer's failure to recuse himself constituted procedural error, Petitioner has not shown that such alleged procedural error caused Petitioner substantial harm.

Petitioner's second and third assertions that Amtrak's failure to produce two UP employees present at the scene after the incident was detrimental to Petitioner's defense of the charges are without merit. While Petitioner indicated that there was much confusion following the incident as the supervisors tried to determine what happened, the signal system data was clear that a stop signal violation occurred. See Tr. at 91; Tr. Exhibit H. The signal system event recorder data was taken directly from CP LF-964 in the field. The operation of the signal system was recorded. UP Manager Signal Maintenance, Mr. Kleckley, explained the data from the event recorder printout. Mr. Kleckley was not required to be present in the field immediately after the incident to be knowledgeable about the data on the printout. Additionally, there can be much speculation regarding the signal system operation following an incident. However, any final decision is based on the actual signal system data, if available, after it has been analyzed. Neither UP Manager of Operating Practices Vogel's nor the Signal Department Foreman's presence were critical to the charges at issue. Moreover, even if Amtrak's failure to produce these two UP employees constituted procedural errors, Petitioner has not demonstrated that such errors caused Petitioner substantial harm in his defense of the charges.

Petitioner's fourth assertion that it is a defense that he was not the engineer actually operating the train is also without merit. Both Petitioner and Engineer Picon testified that Engineer Picon was qualifying on the territory at the time of the incident. Therefore, Engineer Picon was not qualified on the territory and Petitioner was responsible for Engineer Picon's operation of the train. See generally 49 C.F.R. § 240.117(c)(2). As the evidence indicates, Engineer Picon's unfamiliarity with the territory contributed to the violation. See Tr. at 76, 159-60. Engineer Picon believed that the stop signal he passed did not govern his movement. See Tr. at 75. Engineer Picon was not yet qualified on the territory and Petitioner was responsible to ensure that Engineer Picon operated the train safely, including observing the proper governing signals.

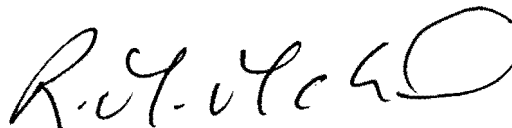
Petitioner's fifth assertion disputing that the signal was in fact displaying a stop indication is also without merit. The signal system event recorder data indicates that the subject signal, CP LF-964, displayed a stop indication from the time a preceding train passed it until Petitioner's train passed it. See Tr. at 90-93, 105. The data did not disclose any signal problems at this particular signal (CP LF-964). See Tr. at 87.

Petitioner's sixth assertion is also without merit. No evidence was introduced to indicate that the signal system event recorder data was not credible. UP Manager Signal Maintenance testified that in his experience, he has never seen an event recorder that has been incorrect. See Tr. at 94-95. Although Petitioner argues that he observed the signal at CP LF-964 to be displaying an approach indication and the signal somehow changed to a stop indication after he diverted his attention to the rear of the train, the evidence indicates otherwise. The signal system event recorder data and Engineer Picon's statement indicate that the signal was red and remained red as the train passed CP LF-964. See Tr. at 50, 65, 77, and 80. The Board has determined that Amtrak has provided substantial evidence to support its revocation decision.

### 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 JUN 21 2011.



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Richard M. McCord  
Chairman,  
Locomotive Engineer Review Board

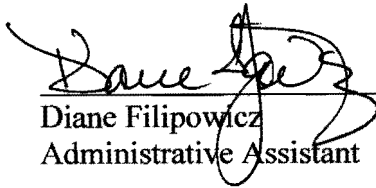
SERVICE LIST EQAL 2010-51

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. R. G. McQueen  
P.O. Box 1449  
Blanco, TX 78606-1449

Mr. Donald H. Savidge  
Assistant System General Road Foreman  
National Railroad Passenger Corporation (AMTRAK)  
CNOC  
15 S. Poplar Street  
Wilmington, DE 19801

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

JUN 21 2011  
Date

enc: Post LERB Memo

cc: FRA DOCKET EQAL 2010-51

**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. Donald H. Savidge  
 Assistant System General Road Foreman  
 AMTRAK, CNOC  
 15 S. Poplar Street  
 Wilmington, DE 19801

EQAL 2010-51

2. Article Number  
(Transfer from service label)

7008 3230 0002 3925 7863

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

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1. Article Addressed to:

Mr. R. G. McQueen  
 P.O. Box 1449  
 Blanco, TX 78606-1449

EQAL 2010-51

2. Article Number  
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Yes