

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

Locomotive Engineer Review Board

Decision Concerning
Union Pacific Railroad's
Revocation of Mr. R. E. Szabo's
Locomotive Engineer Certification

FRA Docket Number EQAL 2011-02

Decision

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of Union Pacific Railroad (UP) to revoke Mr. R. E. Szabo'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 Mr. Szabo's petition because it was filed after the regulatory deadline set forth in 49 C.F.R. § 240.403(d).

Background

On July 30, 2010, at approximately 14:25 hours, Petitioner allegedly passed a stop signal at Prospect without authority while working as a Hostler on Train H643 in Denver, CO, in the vicinity of Milepost (MP) 1.0, on the Moffat Tunnel Subdivision.

An investigation and hearing was held by UP on August 17, 2010. UP revoked Petitioner's certification for violating 49 C.F.R. § 240.117(e)(1) by letter dated August 26, 2010.

Petitioner's Assertions

By petition postmarked January 10, 2010, Petitioner requested FRA to review UP's decision to revoke his certification. The petition asserts that the revocation was improper because:

- (1) The signal was located on the left side of the track and usually signals are located on the right side of the track. The placement of the signal caused Petitioner to doubt that the signal was for his track and so he proceeded past the Stop Signal. Petitioner cites GCOR Rule 5.2.1, "Looking for Signals," that states:

To recognize and follow signals correctly, employees must:

- Always be on the lookout for signals.
- Comply with the intent of the signal.

- Not act on any signal that they do not understand or that may be intended for other trains or engines.

See Pet. at 1;

- (2) Petitioner asserts that the location of Prospect signal is confusing and has been passed displaying a Stop Signal indication by other employees. See Pet. at 1; and
- (3) Petitioner claims he was not properly re-qualified to operate on the territory after his furlough. See Pet. at 1.

UP's Response

Pursuant to 49 C.F.R. § 240.405(b) and (c), a copy of the petition was sent to UP on January 19, 2011, and the railroad was afforded an opportunity to comment. UP submitted a timely response to Petitioner's assertions by letter dated March 9, 2011, as follows:

- (1) The petition was untimely filed. Petitioner's certification was revoked on August 26, 2010. See Pet. at 2. However, the Petitioner filed his appeal beyond the 120-day deadline to file. Petitioner did not request an extension or show any evidence that the failure to timely file was the result of excusable neglect, as required by 49 C.F.R. § 240.403. See Resp. at 2.
- (2) Even if the Board finds excusable neglect for Petitioner's untimely filing, UP's revocation decision should be upheld because even though "Petitioner claims that he did not think the signal was his and that he did not have to comply with the stop signal because of rule 5.2.1. . . . Petitioner is asking the Board to apply rule 5.2.1 to a CTC signal when the application of the rule 5.2.1 is for employees receiving hand signals. The Petitioner was moving in CTC territory on an approach signal which requires him to be prepared to stop at the next signal." See Resp. at 2; Pet. at 1.
- (3) Even though a UP witness provided testimonial evidence of one previous incident where a train that passed the Prospect Signal displaying a Stop Signal (during his entire 14-year railroad career working in the Denver area in the capacity of trainman, conductor and manager), that fact does not mean that the signal itself is confusing. See Resp. at 7.
- (4) Petitioner received ample training after his second furlough in 2010, before the incident in August 2010. First, the 41 days of his furlough did not exceed UP's time requirement of having to notify the Manager of Operating Practices (MOP) and receive additional training. Additionally, Petitioner received a rules exam on June 28, 2010, passed it, and placed himself on RC02 board until July 16, 2010.

He had also trained as a Hostler from April 7, 2010 to April 18, 2010, and he was already a qualified hostler, working numerous hostling jobs in 2009. Petitioner was also a Class I engineer. Thus, “the training he received during this time allowed him to place himself on a Hostling job without further training upon his return as an active employee.” See Resp. at 6-7.

Locomotive Engineer Review Board’s Determination

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

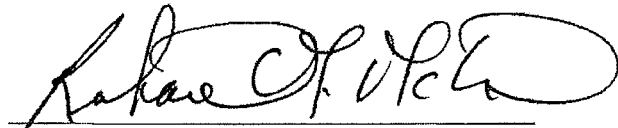
- (1) Petitioner’s certificate was revoked by letter dated August 26, 2010.
- (2) Petitioner’s appeal of UP’s revocation decision was dated January 8, 2011, and postmarked January 10, 2011. FRA’s Docket Clerk received the petition on January 13, 2011.
- (3) 49 C.F.R. § 240.403(d) states that “[a] petition seeking review of a railroad’s decision to revoke certification in accordance with the procedures required by § 240.307 filed with FRA more than 120 days after the date of the railroad’s revocation decision will be denied as untimely except that the Locomotive Engineer Review Board for cause shown may extend the petition filing period at any time in its discretion: (1) Provided the request for extension is filed before the expiration of the period provided in this paragraph (d); or (2) Provided that the failure to timely file was the result of excusable neglect.”
- (4) 49 C.F.R. § 240.7 defines “file, filed, and filing” to mean “submission of a document under this part on the date when the Docket Clerk receives it, or if sent by mail on or after September 4, 2001, the date the mailing was completed.” See 67 Fed. Reg. 22, 23 (Jan. 2, 2002). Because the petition involved in this case was mailed after September 4, 2001, it must have been mailed within 120 days of the date that Petitioner’s certification was revoked to be considered timely by the Board.
- (5) Petitioner’s certification was revoked on August 26, 2010; therefore, the petition had to be postmarked by December 24, 2010, which is 120 days after the date of revocation. Instead, the petition was postmarked January 19, 2011, which is 137 days after the date of the railroad’s revocation decision and 17 days longer than the regulation allows.
- (6) As noted above, § 240.403(d) allows for an extension of the time period if Petitioner shows good cause for the extension. Petitioner has not offered any explanation for the delay in filing his petition; therefore, the Board finds that the petition was untimely filed.

Based on the findings noted above, the Board hereby denies as untimely Engineer Szabo’s

petition for review in accordance with the provisions of 49 C.F.R. Part 240.¹ As the Board finds that this petition must be denied as untimely, the Board need not address the issues raised by Petitioner.

JUL 20 2011

Issued in Chicago, IL on _____.



Richard M. McCord
Chairman,
Locomotive Engineer Review Board

¹ Please be advised that a party aggrieved by a Board decision to deny a petition as untimely has the option to file an appeal with the Administrator in accordance with 49 C.F.R. § 240.411. The appeal must be filed with the Federal Railroad Administrator, 1200 New Jersey Avenue, SE, Washington, DC 20590 within 35 days of issuance of the Board's decision. As there are a number of requirements to file such an appeal, the Board has attached a copy of the relevant regulation for your consideration.

SERVICE LIST EQAL 2011-02

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.

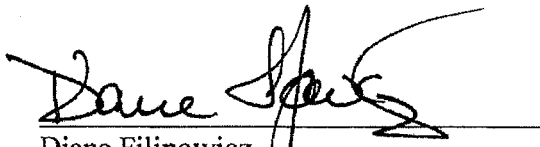
SENT CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. R. E. Szabo
10818 West Evans Avenue #19
Lakewood, CO 80227

Mr. Cullen Kemper
UTU, Local 202
25 S. Marshall St.
Lakewood, CO 80226

Mr. Lawrence Brennan, Jr.
Manager, Engineering Certification & Licensing
Union Pacific Railroad Company
1400 Douglas St., Mailstop 1010
Omaha, NE 68179

Mr. J. L. Breeden
Union Pacific Railroad Company
1400 Douglas St., Mailstop 1020
Omaha, NE 68179



Diane Filipowicz
Administrative Assistant

JUL 20 2011

Date

enc: Post LERB Memo

cc: FRA DOCKET EQAL 2011-02

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 X <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to:		B. Received by (Printed Name)	C. Date of Delivery
Mr. J. L. Breeden Union Pacific Railroad Company 1400 Douglas St., Mailstop 1020 Omaha, NE 68179		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	
EQAL 2011-02		<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.	
7008 3230 0002 3925 7757		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, February 2004		Domestic Return Receipt	
		102595-02-M-1540	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
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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 St., Mailstop 1010 Omaha, NE 68179		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	
EQAL 2011-02		<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.	
7008 3230 0002 3925 7764		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, February 2004		Domestic Return Receipt	
		102595-02-M-1540	

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1. Article Addressed to:		B. Received by (Printed Name)	C. Date of Delivery
Mr. Cullen Kemper UTU, Local 202 25 S. Marshall St. Lakewood, CO 80226		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	
EQAL 2011-02		<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.	
7008 3230 0002 3925 7771		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, February 2004		Domestic Return Receipt	
		102595-02-M-1540	

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. R. E. Szabo
10818 West Evans Avenue #19
Lakewood, CO 80227

EON 2011-02

2. Article Number
(Transfer from service label)

7008 3230 0002 3925 7788

PS Form 3811, February 2004

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

Domestic Return Receipt

102595-02-M-1540