

**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. D. S. Nanna's  
Locomotive Engineer Certification

**FRA Docket Number EQAL 2011-04**

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**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. D. S. Nanna'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 UP's decision to revoke Mr. D. S. Nanna's certification was proper for the reasons set forth below.

**Background**

On October 6, 2010, at approximately 1847 hours, while operating LIW41-06, at Eugene, Oregon, near milepost (MP) 561, Cascade Division, Petitioner allegedly failed to comply with a stop indication at CPVP 561. See Transcript (Tr.) at 54, 218. On October 12, 2010, UP advised Petitioner that he was being charged in connection with the alleged incident described above. See UP Exhibit (Ex.) A. Petitioner was also advised that his engineer's certificate was suspended pending the results of a hearing, which was held on November 1 and 2, 2010. See UP Ex. A & Tr. at 1.

On November 12, 2010, UP advised Petitioner that they had found that the charges against him were sustained, and as a result his engineer's certificate was revoked for a period of thirty (30) days. See UP Notification of Discipline Assessed dated November 12, 2010.

**Petitioner's Assertions**

The Brotherhood of Locomotive Engineers and Trainmen (BLET) filed a petition with FRA on behalf of Petitioner, requesting that the Board review UP's decision to revoke Petitioner's certification. The petition was received on February 8, 2011 and was timely filed. The petition asserts that the revocation was improper because UP failed to consider evidence that the dynamic braking system failed. Petitioner asserts that this event is an intervening cause and pursuant to 49 C.F.R. § 240.307(i)(1), the carrier should not have determined that Petitioner failed to meet the qualification requirements of this section and should not have revoked Petitioner's

certification.

### **UP's Response**

Pursuant to 49 C.F.R. § 240.405(b) & (c), a copy of the petition was sent to UP on February 8, 2011, and the railroad was afforded an opportunity to comment. By letter dated March 9, 2011, UP responded to Petitioner's assertion, as follows:

UP, in good faith and with due diligence, attempted to identify and troubleshoot any and all mechanical issues related to the locomotive's dynamic braking system. UP's efforts are clearly demonstrated by the evidence provided by both UP and Petitioner. Moreover, the engine experienced a level of fault that should be manageable by any of UP's locomotive engineers, if they follow UP's rules and procedures. Had Petitioner complied with basic train handling rules, the light power consist would have been successfully stopped short of the signal. UP makes this assertion based on specific training that was provided to Petitioner on numerous occasions, as well as fundamental and foundational training given to all class I engineers employed at UP. Therefore, Petitioner had sufficient knowledge of UP's rules and procedures that should have prevented Petitioner's violation.

### **Board's Determinations**

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

- (1) The train crew consisted of Petitioner, a conductor, and a brakeman. The crew was operating LIW41-06, a two unit light consist locomotive from Eugene, Oregon to Crescent Lake, Oregon and back to Eugene, Oregon when the incident occurred. See Tr. at 216.
- (2) At approximately 1847 hours near MP 561, Cascade Division, while operating LIW41-06, Petitioner passed a stop signal by approximately 200 feet. See Tr. at 54-55, 219.
- (3) Petitioner completed two consist tests, one when receiving the locomotive and one at the top of the hill. Both consist tests passed. See Tr. at 217.
- (4) Petitioner switched ends on the hill after completing the consist test. See Tr. at 217.
- (5) Petitioner was traveling down the Wicopee Siding northbound, and attempted to slow the locomotive using the dynamic braking system. Petitioner experienced some wheel slip in the dynamic break and attempted unsuccessfully to continue to slow the locomotive using the dynamic break. See Tr. at 218.
- (6) The train reached a speed of about 30 miles per hour (MPH), 10 MPH above the speed

limit. Petitioner put the train into emergency (plugged the train). However, this was also unsuccessful in slowing the train down. See Tr. at 218.

- (7) While the train was still moving, Petitioner and conductor left the cab of the locomotive to set hand brakes. After returning to the cab, the conductor noticed the independent brake was fully released and applied the independent brake, at which point the train stopped 200 feet past the stop indication. See Tr. at 138, 219.
- (8) UP inspected UP 4442, the locomotive involved in this incident, and acknowledged a defect of the dynamic braking system. See Tr. at 76.
- (9) Petitioner attended Locomotive Engineer training at Salt Lake City in 1999 and participated in heavy grade training in 2009. See Tr. at 70, 211-12.

### **Analysis of the Petition**

In reviewing whether the railroad's decision to decertify Petitioner is supported by the facts, the Board must also consider that "[a] railroad shall not determine that the person failed to meet the qualification requirements of this part and shall not revoke the person's certification...if sufficient evidence exists to establish an intervening cause prevented or materially impaired the locomotive engineer's ability to comply with the railroad operating rule or practice which constitutes a violation under § 240.117(e)(1) through (e)(5) of this part." 49 C.F.R. § 240.307(i)(1).

Intervening factors must be analyzed on a case-by-case basis. 64 Fed. Reg. 60966, 60982 (November 8, 1999). Here, Petitioner asserts that failure of the train's dynamic brake was an intervening cause that materially impaired Petitioner's ability to comply with UP rule 9.5. This assertion is without merit. Although there is evidence to show that the train's dynamic brake malfunctioned, Petitioner had other methods he should have put in place to comply with the rule. See Tr. at 76, 138-9, & 220.

As a certified locomotive engineer, Petitioner knew or should have known to apply the independent brake in order to stop the locomotive in this situation. Petitioner admits that he received such instruction during training at Salt Lake City, and UP has satisfactorily proven that it provided further reminders of such a policy and training in the form of IDS messages (messages that appear when a crew receives their track warrants), heavy grade training and simulator training before the incident occurred. See Tr. at 65, 70, & 158. Since the dynamic brake defect did not prevent or materially impair Petitioner from complying with the stop signal, his intervening cause argument cannot be sustained.

Moreover, Petitioner testified that he panicked when he placed the locomotive into emergency, and it did not stop. Petitioner also admits that "under the situation of the failure [of the dynamic brake] and of my past training, with the automatic not working, I did the wrong thing." See Tr. at 220. Therefore, pursuant to 49 C.F.R. § 117(c)(1) "A certified engineer who has demonstrated a failure to comply, as described in paragraph (e) of this section, with railroad rules and practices for the safe operation of trains *shall* have his certification revoked."

(emphasis added). UP has provided substantial evidence to support its decertification decision under 49 C.F.R. § 240.117(c)(1).

**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           AUG 11 2011          .

A handwritten signature in black ink, appearing to read "Richard M. McCord", written over a horizontal line.

Richard M. McCord  
Chairman,  
Locomotive Engineer Review Board

**SERVICE LIST EQAL 2011-04**

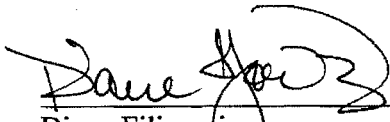
A copy of the Locomotive Engineer Review Board decision in this matter has been sent by certified mail and return receipt requested to each person shown below.

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

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

**AUG 11 2011**

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Date

enc: Post LERB Memo

cc: FRA DOCKET EQAL 2011-04