

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

Locomotive Engineer Review Board

Decision Concerning
Union Pacific Railroad Company's
Decision to Revoke Mr. H. J. Spellman's
Locomotive Engineer Certification

FRA Docket Number EQAL 2011-07

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 Mr. H. J. Spellman'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 has determined that UP's decision to revoke Petitioner's certification was proper under 49 C.F.R. Part 240, and denies the petition for the reasons set forth below.

Background

On October 16, 2010, Petitioner operated train ZLAAHD-13 from Clinton, Iowa to Chicago, Illinois. At approximately 9:55 p.m., near milepost (MP) 29.5, Blue Island subdivision, in the vicinity of Chicago, Petitioner allegedly occupied CSX Transportation (CSX) Main Track Number 1 (MT1) without authority. Pet. at 3; Tr. at 4, 74-75.

On October 28, 2010, UP convened an investigation and hearing. Subsequently, by letter dated November 5, 2010, UP notified Petitioner that his certification was revoked for one month. UP charged Petitioner with violating 49 C.F.R. § 240.117(e)(4) and General Code of Operating Rule ("GCOR") 6.3, for occupying main track or a segment of main track without proper authority or permission. Pet. at; See Tr. Ex. 13.

Petitioner's Assertions

The Brotherhood of Locomotive Engineers and Trainmen (BLET) timely filed a petition on March 7, 2011, requesting that FRA review UP's decision to revoke Petitioner's certification. The petition asserts that the revocation was improper for the following reasons:

- 1) UP incorrectly charged Petitioner with a violation of GCOR 6.3 because the CSX main track operates under NORAC rules, not GCOR rules. UP failed to prove that Petitioner's conduct did not comply with NORAC operating rules and, therefore, failed to satisfy the requirements of 49 C.F.R.

§ 240.307(c)(12). Pet. at 3.

- 2) Petitioner and the conductor requested that the dispatcher provide a pilot to assist them with yarding the train. This incident would not have occurred if UP had provided Petitioner with a pilot as requested, instead of ordering Petitioner to proceed over the switches from Rockwell 2 to Norfolk Southern (“NS”) CJ3. Pet. at 3.

UP’s Response

Pursuant to 49 C.F.R. § 240.405(b) and (c), a copy of the Petition was sent to UP on March 7, 2011, and UP was afforded an opportunity to comment. UP timely responded to Petitioner’s assertions by letter dated May 5, 2011, and, as required by 49 C.F.R. § 240.405(d)(2), provided Petitioner with a copy of the material submitted to FRA. UP responded to Petitioner’s assertions as follows:

- 1) Petitioner claims that UP committed a procedural error when it charged Petitioner with violating GCOR 6.3 and not the NORAC rules employed by CSX. The CSX and UP rules were each entered into the transcript as exhibits. UP Manager of Operating Practices, Mr. Grayer, testified that the applicable GCOR and NORAC rules are equivalent to each other. Both the applicable GCOR and NORAC rules required Petitioner to get authority to enter the main track and, by failing to do so, Petitioner violated 49 C.F.R. §240.117(e)(4) Main Track Authority. UP Resp. at 3-4.
- 2) Petitioner was qualified to deliver trains to NS Ashland Avenue Yard and should not have required a pilot. Petitioner had been over the track many times during his seven-year career as an engineer. The crew pulled right down to the CSX crossover and stopped, lined the crossover to enter the CSX main track, and proceeded without contacting the dispatcher again to see if help was on the way. There is no evidence that the crew was ordered to proceed as the Petitioner claims. Petitioner and his crew were operating on a track that they had no authority to be on, and no one knew they were on it. UP Resp. at 5-7.

Board’s Determination

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

- 1) On October 16, 2010, Petitioner was serving as the engineer of train ZLAAHD-13 from Clinton, Iowa to Chicago, Illinois.
- 2) The train crew consisted of Petitioner and a conductor.

- 3) The terminal train dispatcher verbally instructed Petitioner to travel from Rockwell 2 to NS CJ3 with permission over the switches, according to the transcribed radio communications. Tr. at 39-40. Additionally, Petitioner signed a statement stating that the dispatcher told him to go to CJ3. Tr. at 37, Tr. Ex. 14. Petitioner possessed an NS warrant to operate on the CJ tracks. Tr. at 18.
- 4) After receiving instructions from the terminal train dispatcher, Petitioner asked the dispatcher if there would be someone to help him yard the train (*i.e.*, past Taylor Street and onto NS CJ3), and stated, “I don’t know how to yard. I don’t know how to get there. I don’t know how to yard.” See Tr. at 53, 77. Petitioner did not ask for assistance earlier, stating that the crew “[a]ctually just found out [they] were going to yard the train.” See Tr. at 53. The dispatcher replied, “[a]lright, let me inform Ashland here see [sic] if we can get you some help.” Id.
- 5) Petitioner knew at the outset in Clinton, Iowa, that the final destination of the train was the NS Ashland Avenue yard. Tr. at 75-76. Although Petitioner previously had operated trains into the NS Ashland Avenue yard, during the hearing he could not recall his last trip to this yard. Tr. at 20, 76.
- 6) Petitioner and his crew were required to carry the Chicago Operating Rules Association (“CORA”) Guide,¹ which included UP, NS, and CSX maps of the tracks at issue. Tr. at 31-32, 66; Tr. Ex. 10, 11, 17. The crew held a job briefing at 16th Street with the CORA Guide, and lined the crossover switches for crossover movement after the job briefing. Tr. Ex. 15.
- 7) Petitioner instructed the conductor to line the crossover switches to 16th street from NS CJ3 to CSX MT1. Tr. at 37-38, 81; Tr. Ex. 14. In order to proceed onto the CSX MT1, the crew had to manually operate a switch. Tr. at 56, 81.
- 8) Petitioner and the crew entered CSX MT1, proceeded to Ash Street and stopped. Tr. at 80. Approximately four hours later, an NS crew was sent to relieve the UP crew and discovered train ZLAAHD-15 on CSX MT1 and immediately reported the incident to the Ashland Yardmaster. Tr. at 54-58.
- 9) When UP Manager of Operating Practices, Mr. Grayer, arrived on the scene, Petitioner’s train was at Ash Street on CSX MT1. Petitioner did not possess a track warrant to operate on CSX tracks. Tr. at 18, 55.

¹ The CORA Guide, Sixth Edition (October 1, 2007) was in effect on all railroads operating within the Chicago Terminal District on the day of the incident. Unless specified in the CORA Guide, train crew employees are required to operate under their respective railroad operating rules.

Additionally, Petitioner did not obtain permission from the CSX train dispatcher before entering CSX MT1. Tr. at 27; Tr. Ex. 8a.

- 10) Petitioner and the crew were operating on the section of track identified as “Ash Street DC 28.0 and 14th Street DC 29.7.” Tr. Ex. 8A. CSX rules 251 and 193 governed authority of movement on this section of track. Tr. at 62. Tr. Ex. 16A, 16B, 16C.
- 11) UP operates under GCOR rules. The Petition and UP’s response to the Petition, as well as the hearing transcript, incorrectly state that CSX operates under Northeast Operating Rules Advisory Committee (NORAC) rules. Pet. at 3; UP Resp. at 3-4; Tr. at 63. Rather, CSX has its own comprehensive operating and safety rule books. GCOR Rule 6.3, Main Track Authorization, is equivalent to CSX Rules 251 and 193. See Tr. Ex. 13, 16A, 16B, 16C.

Analysis

Petitioner’s first assertion raises both procedural and factual issues. 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 (April 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.* Separately, “[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 claims that UP incorrectly charged him with a violation of GCOR 6.3. Furthermore, Petitioner mistakenly states that NORAC rules governed the CSX track where the incident occurred and that UP failed to prove that he did not comply with the applicable NORAC rules. Petitioner likely is reacting to the incorrect statement made during the hearing by, UP Manager of Operating Practices, Mr. Grayer, in which he said that CSX operates under NORAC rules. Tr. at 63. This misunderstanding does not, however, affect Petitioner’s assertion that UP failed to satisfy 49 C.F.R. § 240.307(c)(12), which requires that during the hearing “[t]he railroad shall have the burden of proving that the locomotive engineer's conduct was not in compliance with the applicable railroad operating rule or practice or part 219 of this chapter.”

Ultimately, the Board finds that Petitioner operated train ZLAAHD-15 onto CSX main track without authority or permission, which is a violation of 49 C.F.R. § 240.117(e)(4) and a violation under both GCOR and CSX operating rules. Furthermore, the Board finds that Petitioner failed to demonstrate that substantial harm was caused by UP charging him with GCOR Rule 6.3 instead of NORAC and/or CSX Rules 251 and 193. Based on review of the testimony of UP Manager of Operating Practices, Mr. Grayer, and the text of GCOR Rule 6.3

and CSX Rules 251 and 193, which were entered into the railroad hearing record, the Board finds that the applicable GCOR and CSX rules are equivalent to each other. Tr. at 63; See Tr. Ex. 13, 16A, 16B, 16C.

Petitioner's second assertion alleges that the dispatcher's failure to respond to Petitioner's request for a "pilot" to assist Petitioner with "yarding" the train serves as an intervening cause. The Board finds that Petitioner's request does not mitigate the violation. Petitioner did not wait for the assistance that he had requested, nor did he contact the dispatcher again. The Board finds that Petitioner's own voluntary act of directing the conductor to throw the switch to divert onto CSX MT1 was the direct cause of the incident. Tr. at 37-38, 56, 81; Tr. Ex. 14. According to the transcribed radio communications, the train dispatcher never ordered Petitioner to proceed onto unfamiliar territory or to perform service beyond his qualifications. Tr. at 39-40, 53. Additionally, the onus regarding territorial qualification rests on Petitioner pursuant to 49 C.F.R. § 240.231(a), which states "[n]o locomotive engineer shall operate a locomotive over a territory unless he or she is qualified on the physical characteristics of the territory pursuant to the railroad's certification program."

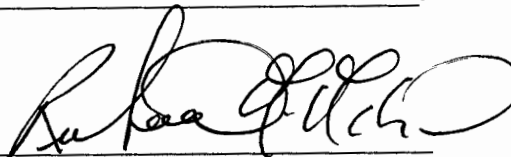
Consequently, after considering Petitioner's actions and given the absence of evidence to the contrary, the Board finds substantial evidence to support UP's decision to revoke Petitioner's Certification.

Conclusion

Based on the above findings and conclusions, the Board finds that the decision to revoke Petitioner's Certification as a locomotive engineer was proper and hereby denies the petition in accordance with the provisions of Title 49, Part 240 of the Code of Federal Regulations.

JAN 30 2012

Issued in Chicago, IL on _____.



Richard M. McCord
Chairman,
Locomotive Engineer Review Board

SERVICE LIST EQAL 2011-07

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.

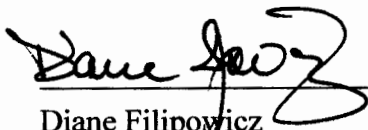
SENT CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. H. J. Spellman
1239 S. Lawndale
Chicago, IL 60623 - 1551

Mr. R. E. Crow
Local Chairman
BLET Division 404
P.O. Box 403
Warrenville, IL 60555

Mr. David M. Giandinoto
General Superintendent
Union Pacific Railroad Company
301 W. Lake Street
Northlake, IL 60164

Ms. Christine Hampton
Director Training & Quality Assurance
Union Pacific Railroad Company
1400 Douglas Street, Mailstop 1030
Omaha, NE 69179



Diane Filipowicz
Administrative Assistant

JAN 30 2012

Date

enc: Post LERB Memo

cc: FRA Docket EQAL 2011-07

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 checked="" type="checkbox"/> Addressee X	
1. Article Addressed to: <p style="text-align: center;">Mr. H. J. Spellman 1239 S. Lawndale Chicago, IL 60623 - 1551</p>	B. Received by (Printed Name)	C. Date of Delivery
	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 <i>(Transfer from service label)</i>	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	
EQAL 2011-07 7008 3230 0002 3925 7436		
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540		

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 checked="" type="checkbox"/> Addressee X	
1. Article Addressed to: <p style="text-align: center;">Mr. R. E. Crow Local Chairman BLET Division 404 P.O. Box 403 Warrenville, IL 60555</p>	B. Received by (Printed Name)	C. Date of Delivery
	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 <i>(Transfer from service label)</i>	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	
EQAL 2011-07 7008 3230 0002 3925 7443		
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540		

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 checked="" type="checkbox"/> Addressee X	
1. Article Addressed to: <p style="text-align: center;">Mr. David M. Giandinoto General Superintendent Union Pacific Railroad Company 301 W. Lake Street Northlake, IL 60164</p>	B. Received by (Printed Name)	C. Date of Delivery
	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 <i>(Transfer from service label)</i>	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	
EQAL 2011-07 7008 3230 0002 3925 7450		
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:

Ms. Christine Hampton
 Director Training & Quality Assurance
 Union Pacific Railroad Company
 1400 Douglas Street, Mailstop 1030
 Omaha, NE 69179

EQAL 2011-07

2. Article Number

(Transfer from service label)

7008 3230 0002 3925 7467

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