

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

Locomotive Engineer Review Board

Decision Concerning
Union Pacific Railroad Company's
Revocation of Mr. C. L. James's
Locomotive Engineer Certification

FRA Docket Number EQAL-2011-10

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. C. L. James'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 Petitioner's certification was improper for the reasons set forth below.

Background

On November 16, 2010, at approximately 1:38 p.m., while operating Train 2IMNG4R-15 at Joliet Intermodal Terminal (JIT), Petitioner allegedly passed a stop signal at CP I016 without authority. UP asserts that Petitioner violated Federal railroad safety law 49 C.F.R. § 240.117(e)(1), prohibiting Petitioner from passing a stop signal without authority.

Petitioner was assigned to Train 2IMNG4R-15 as a training engineer. An instructor engineer and conductor were also assigned to the train. The crew was not familiar with the physical characteristics of the territory. They informed the Manager of Road Operations (MRO) at JIT, and he decided to ride along with the crew. The UP Train Dispatcher instructed the crew to proceed on Main Track 1. Prior to entering the IHB Railroad, the IHB Dispatcher instructed the crew to stop the train. The MRO received a cell phone call informing him that they had passed a stop signal located at 144th Street, at CP I016.

By letter dated December 22, 2010, Petitioner was notified that his certificate was revoked for passing a stop signal without authority. A petition was timely filed with FRA on April 14, 2011, by the Brotherhood of Locomotive Engineers and Trainmen on behalf of Petitioner, requesting that FRA review UP's decision to revoke Petitioner's certification. The petition asserts that the revocation was improper because:

- (1) At the time that Train 2IMNG4R-15 approached the stop signal at CP I016, the crew mistakenly called a diverging approach signal (a distant signal that followed the stop

signal), which led Petitioner to understand that it was the next signal. The crew's incorrect signal call prevented Petitioner from properly stopping the train as required by 49 C.F.R. § 240.117(e)(1); and

- (2) The MRO, performing duties as a pilot, failed to take appropriate action to prevent Train 2IMNG4R-15 from passing the stop signal at CP I016. The MRO's failure to act prevented Petitioner from properly stopping the train as required by 49 C.F.R. § 240.117(e)(1).

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 received by FRA on June 22, 2011.

UP's Response

UP responded to Petitioner's assertions by arguing that:

- (1) The signal at CP I016 was in plain view with no obstructions inhibiting Petitioner's view of the red stop indication. As the engineer, Petitioner was responsible for the safe operation of Train 2IMNG4R-15; and
- (2) The MRO was not a member of the crew, and he rode Train 2IMNG4R-15 only to gain route and territorial familiarization. In addition, the MRO did not see the signal indication at CP I016 because his attention was directed at his notes, rather than the signal.

Analysis of the Petition

The Board finds that substantial evidence shows that on November 16, 2010, Petitioner operated Train 2IMNG4R-15 passed a stop signal at CP I016. See Exs. 23-26.

Both of Petitioner's assertions identify intervening causes that prevented him from complying with the Federal regulations. Section 240.307(i)(1) provides 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 that 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." Intervening causes must be analyzed on a case-by-case basis. 64 Fed. Reg. 60982.

Petitioner's second assertion is that the MRO, performing duties as a pilot, failed to take appropriate action to prevent Train 2IMNG4R-15 from passing the stop signal at CP I016. The Board finds that the MRO's failure to perform his duties as a pilot was an intervening cause. According to testimony, after learning that Petitioner and other crew members lacked territorial qualifications for the assignment, the MRO told the crew that he was going to serve as their pilot.

See Tr. at 100. Petitioner and other crew members all understood that the MRO was piloting the train. See Tr. at 99, 108, and 116. Based on the crew's understanding, Petitioner reasonably relied on the MRO to ensure that the crew identified and complied with the proper signals. The MRO took no action relevant to the stop signal at CP I016, and his failure to act materially impaired Petitioner's ability to properly stop the train as required by 49 C.F.R. § 240.117(e)(1).

As this decision is based on Petitioner's second assertion, the Board declines to address Petitioner's other assertion.

Conclusion

Based on the above findings and conclusions, the Board hereby GRANTS the petition in accordance with the provisions of Title 49, Part 240 of the Code of Federal Regulations.

Issued in Chicago, IL on JAN 09 2012.



Richard M. McCord
Chairman,
Locomotive Engineer Review Board

SERVICE LIST EQAL 2011-10

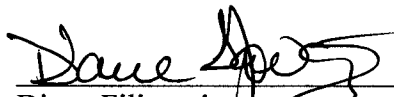
A copy of the Locomotive Engineer Review Board decision in this matter has been sent by certified mail to each person shown below.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. C. L. James
9650 S Indiana
Chicago, IL 60628-1412

R. E. Crow
Local Chairman
BLET Division 404
3120 Riverbirch Dr. Apt 207
Aurora, IL 60502

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



Diane Filipowicz
Administrative Assistant

JAN 09 2012

Date

enc: Post LERB Memo

cc: FRA Docket EQAL 2011-10

SENDER: COMPLETE THIS SECTION

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- 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. C. L. James
9650 S Indiana
Chicago, IL 60628-1412

EQAL 2011-10

2. Article Number
(Transfer from service label)

7008 3230 0002 3925 4923

COMPLETE THIS SECTION ON DELIVERY

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1. Article Addressed to:

R. E. Crow, Local Chairman
BLET Division 404
3120 Riverbirch Dr. Apt 207
Aurora, IL 60502

EQAL 2011-10

2. Article Number
(Transfer from service label)

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- 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 2011-10

2. Article Number
(Transfer from service label)

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4. Restricted Delivery? (Extra Fee) Yes