

**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. L. L. Monroe's
Locomotive Engineer Certification

FRA Docket Number EQAL 2011-14

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. L. L. Monroe's locomotive engineer certification (certification) in accordance with the provisions of Title 49, Part 240 of the Code of Federal Regulations (49 C.F.R. 240). The Board hereby denies Mr. Monroe's petition because it was filed after the regulatory deadline set forth in 49 C.F.R. Part 240.403(d).

Background

On November 16, 2010, Petitioner was operating UP Train 2IMNG4R-15 when the train passed a stop signal at CPI016 near Dolton, Illinois on Main Track 1 of the Villa Grove Subdivision. Petitioner's certification was revoked for violating a railroad operating rule or practice that involves a failure to control a locomotive or train in accordance with a stop signal indication in accordance with 49 C.F.R. Part 240.117(e)(1).

By petition mailed on May 9, 2011, Petitioner requested that FRA review UP's decision to revoke his certification. The petition asserts that the revocation was improper and attempts to shift responsibility from Petitioner to a manager who was allegedly serving as a pilot. That manager denied being a pilot.

Pursuant to 49 C.F.R. Part 240.405(b) and (c), a copy of the petition was sent to the railroad. UP responded to Petitioner's substantive assertions, but also asserted that the Board should deny the petition as it was not filed by the regulatory prescribed deadline and no excuse was provided for the late filing.

Board's Determination

Based on its review of all of the information submitted, the Board has determined that:

- (1) Petitioner's certificate was revoked by letter dated December 22, 2010.
- (2) Petitioner's appeal of UP's revocation decision was mailed on May 9, 2011.
- (3) 49 C.F.R. Part 240.403(d) states that A[a] petition seeking review of a railroad's decision to revoke certification in accordance with the procedures required by Part 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 A file, filed, and filing to mean A 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 (January 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 in order to be considered timely by the Board.
- (5) Petitioner's certification was revoked on December 22, 2010; therefore, the petition had to be postmarked by April 21, 2011, which is 120 days after the date of revocation. Instead, the petition was mailed on May 9, 2011, which is 138 days after the date of the railroad's revocation decision and eighteen days longer than the regulation allows. As noted above, Part 240.403(d) allows for an extension of the time period if Petitioner shows good cause for the extension. Petitioner did not offer any explanation for the delay in filing his petition; therefore, the Board finds that the petition was untimely filed.

Conclusion

Based on the findings noted above, the Board hereby denies as untimely Mr. Monroe'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 other issues raised by Petitioner.

Issued in Chicago, IL on JAN 30 2012



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 Ave., SE, Washington, DC 20590 within 35 days of issuance of the Board's decision.

SERVICE LIST EQAL 2011-14

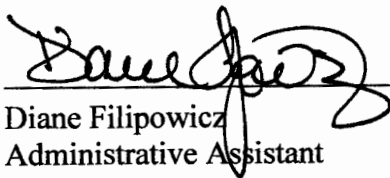
A copy of the Locomotive Engineer Review Board decision in this matter has been sent by certified mail and return receipt requested to each person shown below.

SENT CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. L. L. Monroe
14100 S. Longview Lane
Plainfield, IL 60544

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

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 2011-14

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 type="checkbox"/> Addressee X	
1. Article Addressed to:		B. Received by (Printed Name)	C. Date of Delivery
Mr. L. L. Monroe 14100 S. Longview Lane Plainfield, IL 60544		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
		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.	
2. Article Number (Transfer from service label)		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
EQAL 2011-14		7008 3230 0002 3925 7504	
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 type="checkbox"/> Addressee X	
1. Article Addressed to:		B. Received by (Printed Name)	C. Date of Delivery
Mr. R. E. Crow BLET Local Chairman P.O. Box 403 Warrenville, IL 60555		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
		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.	
2. Article Number (Transfer from service label)		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
EQAL 2011-14		7008 3230 0002 3925 3155	
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 type="checkbox"/> Addressee X	
1. Article Addressed to:		B. Received by (Printed Name)	C. Date of Delivery
Ms. Christine Hampton Director Training & Quality Assurance Union Pacific Railroad Company 1400 Douglas Street, Mailstop 1030 Omaha, NE 69179		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
		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.	
2. Article Number (Transfer from service label)		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
EQAL 2011-14		7008 3230 0002 3925 3148	
PS Form 3811, February 2004		Domestic Return Receipt 102595-02-M-1540	