

**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. J.A. Barrera's  
Locomotive Engineer Certification

**FRA Docket Number EQAL 2011-18**

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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. J.A. Barrera'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 grants the petition for the reasons stated below.

**Background**

On February 22, 2011, at approximately 4:10 p.m., while operating Train APXEGR-21, Petitioner allegedly failed to reduce his train speed to 30 MPH to comply with the speed restriction in place when the wayside hot box and dragging equipment detector (hot box) located at MP 374 on the Del Rio Subdivision failed to communicate an exit message to the crew. Pet. Ex. A.

UP charged Petitioner with a violation of 49 C.F.R. § 240.117(e)(2), "Failure to adhere to limitations concerning train speed when the speed at which the train was operated exceeds the maximum authorized limit by at least 10 MPH." An investigation and hearing was held on March 8, 2011, and UP notified Petitioner of the revocation of his certification by a letter dated March 18, 2011. Pet. at 1. See also Pet. Ex. A.

**Petitioner's Assertions**

By petition received on June 22, 2011, Petitioner requested FRA to review UP's decision to revoke his certification. The petition asserts that the revocation was improper because:

- (1) The basis for the determination to revoke the Petitioner's certificate was a direct result of his alleged failure to "immediately" reduce train speed to 30 MPH when there was a detector failure. Unlike signal rules, there is no requirement in the UP System Special Instructions (SSI) stating a train must immediately reduce speed and the Petitioner believes he complied with the instruction. Pet. at 2; and

- (2) The Petitioner was qualified to operate on the territory. However, due to infrequent operation over the territory, Petitioner had to reference the UP SSI to determine appropriate action after the hot box failed to issue an exit message. The instructions were complicated, consisting of nine pages and required the cross referencing of two separate tables. On one table, UP assigns characters #, (#), &, (&), %, @ to connote specific wayside detector types. The wayside detector at MP 374 was a (#) that equates to Hot Box (Hot Wheel) and Dragging Equipment. The Petitioner then had to reference a second table in order to determine appropriate crew action. The instruction required Train APXEGR-21 to immediately contact the train dispatcher and reduce train speed to 30 MPH. Pet. at 4.

### **UP's Response**

Pursuant to 49 C.F.R. § 240.405(b) and (c), a copy of the petition was sent to UP on July 20, 2011, and the railroad was afforded an opportunity to comment. UP submitted a timely response to Petitioner's assertions by letter dated September 14, 2011, as follows:

- (1) The Petitioner testified that there was no exit message and increased his speed from 39 to 50 MPH, resulting in a failure to adhere to speed restriction in place because the crew did not receive an exit message. The crew testified that they attempted to contact the dispatcher and understood that that was a necessary action to be taken. The Petitioner took no action to reduce the train speed, but rather increased it, despite not receiving an exit message. Actions to reduce the train speed only occurred when the train reached a distance of more than four miles after clearing the detector. Resp. at 3; and
- (2) There was no evidence presented that the Petitioner was required to be off his turn in unfamiliar territory. Additionally, no evidence was presented that the Petitioner notified Crew Management (CMS) or a Manager of Operating Practices (MOP) for re-familiarization over the territory. Resp. at 3-4.

### **Locomotive Engineer Review Board's Determination**

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

- (1) On February 22, 2011, at approximately 4:10 p.m., Petitioner served as a locomotive engineer of Train APXEGR-21 with a total length of 5,763 feet (1.1 miles). Pet. at 1. See also, Tr. at 61.
- (2) At the same time and date, two UP Managers of Road Operations (MRO) were performing a Field Training Exercise (FTX) at a wayside hot box and dragging equipment detector located at MP 374 on the Del Rio Subdivision. The purpose of the test was to observe operating rule compliance when the automatic radio

transmitted exit message was not communicated to the crew (detector failure). Resp. at 1. See also, Pet. at 1. See also, Tr. at 33-34, 110.

- (3) The crew received an entry message from the hot box as the train entered the wayside detector at MP 374 at a speed of approximately 39 MPH. Tr. at 60. At this same time, the head-end was entering a segment of main track between MP 373.9 and 373.2 under form B authority where Maintenance of Way was working. The crew received permission to proceed at maximum authorized speed and accelerated to a speed of 50 MPH. Tr. at 60. The maximum authorized speed on the main track was 70 MPH. Pet. at 1. See also, Tr. at 177-182, 241.
- (4) In the vicinity of Laughlin Base Crossing (MP 372), the crew realized they heard no transmitted response from the hot box, and immediately attempted to contact the train dispatcher and held a “rolling job safety briefing” as the conductor referred to railroad issued materials in their possession to determine the appropriate action. Tr. at 184.
- (5) Approximately, three minutes later the conductor discovered Item 13 of the UP SSI, which required slowing the train to 30 MPH and the Petitioner applied the train brake to reduce train speed. Considering safe train handling and according to event recorder data, this action occurred at MP 368.9 and took one minute and thirty-one seconds over a distance of 1.2 miles to achieve. At MP 367.7 train APXEGR-21 was proceeding at the prescribed SSI speed. Tr. at 183-186.
- (6) The train was stopped at Amanda, approximately 12 miles from the location of the wayside equipment detector, and the crew was removed from service by the MROs. Tr. at 52.
- (7) UP charged Petitioner with a violation of 49 C.F.R. § 240.117(e)(2), “Failure to adhere to limitations concerning train speed when the speed at which the train was operated exceeds the maximum authorized limit by at least 10 MPH.” An investigation and hearing was held on March 8, 2011, and UP notified Petitioner of the revocation of his certification by a letter dated March 18, 2011. Pet. at 1. See also, Pet. Ex. A.

### **Analysis of the Petition**

In reviewing petitions of revocation decisions, the Board considers whether substantial evidence exists to support the railroad’s factual findings in its decision for revocation under FRA’s regulations. See 49 C.F.R. § 240.405(f). See also, 58 Fed. Reg. 18982, 19001 (April 9, 1993). Based on the Petitioner’s first assertion, the Board does not find that UP had substantial evidence to revoke Petitioner’s certification. The alleged violation occurred during a controlled FTX test and the Petitioner does not refute the fact Train APXEGR-21 did not receive an exit message to the hot box and dragging equipment detector at MP 374. Pet. at 1. According to event recorder data, the train accelerated to 50 MPH and traveled 4 miles and 15 feet (approximately 6 minutes)

after the rear end passed the wayside detector before action was taken to reduce train speed. Tr. at 172. However, the Action Table for UP SSI 13.7.2., Item 4, requires no immediate action and instead states: "proceed not exceeding 30 MPH," which Petitioner did at MP 367.7. Pet. Ex. 2. See also, Tr. at 127-128, 183-186. Nevertheless, even if the term "immediate" did apply to Item 4, "immediate" is too vague and ambiguous a term regarding exactly where the speed restriction should have begun. Because the rule is ambiguous on this issue, the Board cannot determine objectively whether Petitioner violated the SSI, and thus violated any speed restriction. Consequently, the Board has decided that, as a matter of law, UP has failed to present substantial evidence that this incident met the requirements for a revocable event.

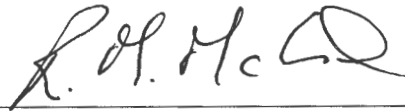
Petitioner's second assertion involves an intervening cause. In determining whether revocation was proper under FRA's regulations, the Board considers whether "an intervening cause prevented or materially impaired the locomotive engineer's ability to comply with the railroad operating rule or practice which constitutes a violation under §§ 240.117(e)(1) through (e)(5) of this part." 49 C.F.R. § 240.307(i)(1). Petitioner argues that he should not be held responsible for the alleged violation because the nine-page SSI is excessively complicated to access. The Board finds this assertion is without merit. Table symbols and cross-referencing is a common practice when a railroad has different types or models of fixed or rolling equipment that require different restrictions or special actions. This is evidenced by the quickness (about 2-3 minutes) the conductor demonstrated in accessing the information and reducing speed. Tr. at 183. The written format of the nine-page SSI does not mitigate the alleged violation.

### **Conclusion**

Based on the findings noted above, the Board hereby grants Engineer Barrera's petition for review in accordance with the provisions of 49 C.F.R. Part 240.

FEB 07 2012

Issued in Chicago, IL on \_\_\_\_\_.



Richard M. McCord  
Chairman,  
Locomotive Engineer Review Board

**SERVICE LIST EQAL 2011-18**

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. J.A. Barrera  
P.O. Box 421788  
Del Rio, TX 78842-1788

Mr. Warren Dent  
General Chairman  
BLET  
Union Pacific, Southern Region  
607 W. Harwood Rd.  
Hurst, TX 76054

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

Ms. Christine Hampton  
Director, Training and Quality Assurance  
Union Pacific Railroad Company  
1400 Douglas St., Mailstop 1030  
Omaha, NE 68179

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

**FEB 07 2012**  
\_\_\_\_\_  
Date

enc: Post LERB Memo  
cc: FRA DOCKET EQAL 2011-18

**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. J.A. Barrera  
 P.O. Box 421788  
 Del Rio, TX 78842-1788

*EQAL 2011-18*

2. Article Number

(Transfer from service label)

7008 3230 0002 3925 8136

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

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A. Signature

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Agent

Addressee

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1. Article Addressed to:

Mr. Warren Dent  
 General Chairman, BLET  
 Union Pacific, Southern Region  
 607 W. Harwood Rd.  
 Hurst, TX 76054

*EQAL 2011-18*

2. Article Number

(Transfer from service label)

7008 3230 0002 3925 8129

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1. Article Addressed to:

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

*EQAL 2011-18*

2. Article Number

(Transfer from service label)

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1. Article Addressed to:

Ms. Christine Hampton  
Director, Training and Quality Assurance  
Union Pacific Railroad Company  
1400 Douglas St., Mailstop 1030  
Omaha, NE 68179

*EQUAL 2011-18*

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7008 3230 0002 3925 8105

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C. Date of Delivery

D. Is delivery address different from item 1?  Yes

If Yes, give delivery address below:  No

3. Service Type

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Express Mail

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Return Receipt for Merchandise

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C.O.D.

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Yes