

**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. M. L. McLaughlin's  
Locomotive Engineer Certification

**FRA Docket Number EQAL 2011-22**

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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 Company (UP) to revoke Mr. M. L. McLaughlin'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 denies Mr. McLaughlin's petition for the reasons set forth below.

**Background**

By letter dated March 5, 2011, UP notified Petitioner that his certification was suspended pending possible revocation for violating § 240.117(e)(1) by "fail[ing] to control a locomotive or train in accordance with a signal indication, excluding a hand or a radio indication, or a switch, that requires a complete stop before passing it."

An investigative hearing was held on March 29, 2011. By letter dated April 7, 2011, UP notified Petitioner that his certification had been revoked for 30 days pursuant to 49 CFR Part 240.117(e)(1) for "fail[ing] to stop for a signal displaying a Red (Stop)" in violation of General Code of Operating Rules (GCOR) 9.5 and System Special Instruction 9.2.15.

Petitioner filed a petition for review (Petition) which was timely received by FRA on July 7, 2011. According to Petitioner, he initially began to proceed at restricted speed past an absolute stop signal because both he and his conductor had thought that a "Grade Marker" on the signal mast at mile post (MP) 54.2 applied to them. He began to stop his train after realizing that the grade marker applied to traffic in the opposite direction but was able to come to a stop only after two engine lengths had passed the signal.

Petitioner also asserted that UP should not have charged him with violating its GCOR and System Special Instructions since his alleged violation had occurred during a BNSF field test on BNSF territory. He also argued that UP supervisors should have been but were not present during the test and that BNSF had not charged him with a violation of its rules.

UP responded to the Petition by letter dated September 12, 2011. UP argued that Petitioner had not challenged the validity of the test and had admitted that he had proceeded past a red signal. UP also noted that Petitioner had not challenged the position or posting of the grade marker sign and that there was no evidence in the record to show that the sign's display had been improper.

### **Board's Determinations**

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

- (1) On March 4, 2011, Petitioner was the locomotive engineer on UP Train CNNBM-03 operating westbound on the Orin Subdivision, a joint territory controlled by the Burlington Northern Santa Fe Railroad (BNSF). Petitioner was qualified on the Orin Subdivision and aware of its physical characteristics (Tr. 146).
- (2) Two BNSF trainmasters were conducting a Field Training Exercise by shunting the track for westbound traffic to display a Stop Signal at milepost 54.2 (stop test). At approximately 1450 Hours, the trainmasters observed Train CNNBM-03 pass the signal without stopping. The train came to rest approximately two engine lengths (around 150 feet) to the rear of the block signal location.
- (3) UP charged Petitioner with violating General Code of Operating Rules (GCOR) Rule 9.5 (Stop) while operating on a foreign railroad. UP's Notice of Investigation charged Petitioner with passing a signal displaying Stop near MP 54.2 on the Orin Subdivision. Transcript Ex. B..

- (4) GCOR Rule 9.5 states:

#### 9.5. Where Stop Must Be Made

When movement is being made beyond a block signal requiring a train to be prepared to stop at the next signal, the stop must be made before any part of a train passes the block signal requiring the train to stop.

If a train overruns any block signal that requires it to stop, the crew must:

Warn other trains at once by radio.

Stop the train immediately.

Report it to the train dispatcher.

- (5) At the hearing, Petitioner testified that he saw the oval silhouette of a grade marker on the reverse side of signal post 54.2. He initially thought that the grade

marker governed his westbound train, but then realized that it only governed eastbound traffic (Tr. 147).

- (6) Petitioner testified that after he realized that the grade marker didn't apply to him he began to stop the train, since the signal displayed an absolute stop. The train came to a full stop two engine lengths past the stop signal. (Tr. 145).
- (7) After the hearing, UP also charged Petitioner with violating provisions of System Special Instruction 9.2.15 (Absolute Stop Signal).

### **Analysis of the Petition**

The Board finds that UP has provided substantial evidence to support its revocation decision that Petitioner improperly passed a signal requiring an absolute stop. As the host railroad, BNSF was responsible for assuring rule compliance. Both BNSF and UPRR are governed by GCOR Rule 9.5, which is identical for both railroads. The stop test conducted by BNSF on Petitioner's train crew was correct and followed UP field testing procedures. BNSF's rules test of a tenant train crew is a standard practice which did not require joint BNSF/UP supervisory participation.

The Board also finds that the grade marker on the back of the signal post at MP 54.2 did not apply to trains operating in Petitioner's direction of movement. Without the presence of a governing grade marker, GCOR Rule 9.5 required Petitioner to come to a complete stop at the signal before proceeding. Petitioner had no basis for assuming that the presence of an oval silhouette on the signal post meant that the Grade Marker applied to his direction of travel. Petitioner's violation of GCOR Rule 9.5 and System Special Instruction 9.2.15 was due to his own mistake.

### **Conclusion**

For the foregoing reasons, the Board finds that UP's decision to revoke Petitioner's certification under the provisions of 49 C.F.R. Part 240 is supported by substantial evidence. Based on its review of the record, the Board hereby denies the petition in accordance with the provisions of 49 C.F.R. Part 240.

Issued in Chicago, IL on FEB 07 2012.



Richard M. McCord  
Chairman,  
Locomotive Engineer Review Board

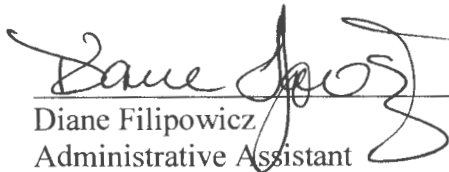
**SERVICE LIST EQAL 2011-22**

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.

Mr. M. L. McLaughlin  
2918 West A Street  
Torrington, WY 82240

Mr. L. Olson  
General Chairman  
Union Pacific-BLET Division 303  
2025 19<sup>th</sup> Street  
Gering, NE 69341

Ms. C. Hampton  
Director Training & Quality Assurance  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, NE 68179-0710

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

**FEB 07 2012**

\_\_\_\_\_  
Date

enc: Post LERB Memo

cc: FRA DOCKET EQAL 2011-22

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Mr. L. Olson General Chairman Union Pacific-BLET Division 303 2025 19th Street Gering, NE 69341		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
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Ms. C. Hampton Director Training & Quality Assurance Union Pacific Railroad Company 1400 Douglas Street Omaha, NE 68179-0710		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
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