

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

Locomotive Engineer Review Board

Decision Concerning
Union Pacific Railroad Company's
Revocation of Mr. D. R. Denecamp Jr.'s
Locomotive Engineer Certification

FRA Docket Number EQAL 2011-24

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. D. R. Denecamp Jr.'s (Petitioner) locomotive engineer certification (certification) in accordance with the provisions of Title 49, Part 240 of the Code of Federal Regulations (49 CFR part 240). The Board hereby grants Mr. Denecamp Jr.'s Petition for the reasons set forth below.

Background

Petitioner seeks review of UP's decision to revoke his locomotive engineer certification following an incident on February 2, 2011. Petitioner was serving as the locomotive engineer for Train MLDHO-02. The train crew consisted of Petitioner and a conductor. At approximately 7:47 pm, UP Manager of Road Operations (MOP) A. Ibarra was performing a field training exercise (FTX) at a wayside hot box detector located at milepost (MP) 198.9 on the UP's Glidden Subdivision near San Antonio, Texas. The purpose of the test was to observe whether the crew complied with UP's operating rules that apply when a detector failure causes an automatic radio transmitted exit message to not be communicated to the crew. MOP Ibarra attempted to disable the exit message of the wayside hot box detector as part of the FTX. After Petitioner did not reduce the train speed to 30 mph upon the train exiting the wayside hot box detector, MOP Ibarra removed Petitioner from service.

On February 28, 2011, UP held a formal hearing to develop facts and place appropriate responsibility concerning the subject incident. Specifically, UP investigated whether Petitioner failed to immediately reduce the locomotive speed to 30 mph when he did not receive an exit message from the hot box detector. Additionally, the formal hearing served as an investigation into whether Petitioner's certification should be revoked under 49 CFR part 240 for operating the locomotive at excessive speed.

During the formal hearing, there was testimony that MOP Ibarra was performing an FTX without the assistance of additional UP personnel. Tr. 71. MOP Ibarra testified that he disabled the exit

message setting by flipping an on-off switch inside the detector bungalow at MP 198.9, placed a handheld two-way radio in the detector bungalow, and listened to verify that the exit message was not sent by the detector. Tr. 71. Petitioner testified that he heard the exit detector sound off in the locomotive cab, but could not decipher the precise message. Tr. 105, 109. The conductor on Train MLDHO-02, who was in the locomotive cab with Petitioner, also testified to hearing an exit message from the detector. Tr. 113-114. After consulting with the conductor, a decision was made by the train crew that there was not a need to reduce the train speed to 30 mph. Tr. 109.

UP revoked Petitioner's certificate based on the finding that Petitioner had violated 49 CFR § 240.117(e)(2) by failing "to adhere to limitations concerning train speed when the speed at which the train was operated exceeds the maximum authorized limits by at least 10 mph." UP's letter notifying Petitioner of its revocation decision was sent by certified mail to Petitioner and his union representatives on March 10, 2011.

Petitioner's Petition for Review was dated June 17, 2011 and was delivered to FRA on June 22, 2011. The Petition asserts three grounds for overturning UP's revocation decision:

- (1) Petitioner contends that both he and the conductor on Train MLDHO-02 heard an exit message from the wayside detector at MP 198.9.
- (2) Petitioner asserts that MOP Ibarra conducted the field efficiency test by himself and that there were no additional witnesses or other verifiable means to confirm that no exit message was transmitted by the wayside detector.
- (3) Petitioner contends that the violation for the train traveling in excess of 10 mph over the speed limit is baseless because no rule or other evidence was presented to support a requirement that the train crew must "immediately" reduce the train speed to 30 mph where the wayside detector is determined to have not transmitted an exit message.

Pursuant to 49 CFR §§ 240.405(b) and (c), a copy of the Petition was sent to UP, and the railroad was afforded an opportunity to comment. UP responded to the Petition in a letter dated September 14, 2011. UP's response takes the position that:

- (1) Petitioner testified that he did not fully understand the exit message and discussed the message received with the conductor, who also did not fully understand the exit message.
- (2) Because the exit message was not fully understood, the train crew could not take the exit message as complete and satisfactory. See GCOR Rule 2.6
- (3) As a result, Petitioner should have contacted the train dispatcher and proceeded at a speed not exceeding 30 mph. See System Special Instructions (SSI) Item 13.7.2.

- (4) Petitioner continued operating Train MLDHO-02 at speeds up to 48 mph, rather than adhere to the 30 mph speed restriction.
- (5) As a result, Petitioner violated GCOR Rule 6.31 and 49 CFR § 240.117(e)(2) by operating the train in excess of 10 mph over the required speed.

Board's Determination

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

- (1) On February 2, 2011, Petitioner was the engineer on Train MLDHO-02, which operated over MP 198.9 on UP's Glidden Subdivision at approximately 7:47 pm. Tr. 105.
- (2) As the head of the train passed the wayside hot box detector, the crew received an entry message. Tr. 105
- (3) Once the entry message had been transmitted, MOP Ibarra attempted to disable the exit message as part of an FTX. Tr. 71.
- (4) MOP Ibarra conducted the FTX without the assistance of other UP personnel and monitored the disabled exit message with a handheld two-way radio that was inside the wayside detector bungalow. Tr. 71.
- (5) Petitioner and the conductor for Train MLDHO-02 reported hearing an exit message but could not decipher the entire contents of the exit message. Tr. 105, 109.
- (6) After passing the wayside hot box detector, Petitioner continued operating Train MLDHO-02 at speeds up to 48 mph. Tr. 142.
- (7) Train MLDHO-02 proceeded to control point 187, where the train was met by MOP Ibarra, and Petitioner was removed from service. Tr. 105-107.
- (8) Petitioner was charged with a violation of § 240.117(e)(2) for failing to immediately reduce the train speed to 30 mph, and his locomotive engineer certification was revoked by UP following a hearing held on February 28, 2011. See UP Letter to Petitioner dated March 10, 2011.
- (9) The Board finds that SSI Item 13.7.2 is ambiguous on the issue of the beginning point of the speed restriction.

Analysis

When the Board reviews the revocation decision of a railroad, it must consider whether there is substantial evidence to support a railroad’s factual findings that revocation of the locomotive engineer’s certification is warranted 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 information available to the Board, UP has not presented substantial evidence to support its decision to revoke Petitioner’s locomotive engineer certification. Item 13.7.2 of UP’s System Special Instructions (SSI) simply is too ambiguous on the issue of the beginning point of the speed restriction to be relied upon to support revocation.

UP essentially argues that revocation is appropriate even if the Board accepts the hearing testimony of Petitioner that he heard an exit message when the rear of Train MLDHO-02 passed the wayside hot box detector because Petitioner also testified that he did not fully understand the exit message. Tr. 105, 109. According to UP, in such situations the train crew must treat the message as if it was not sent. See GCOR Rule 2.6. While this may be an accurate statement of the requirements in GCOR Rule 2.6, the Board still must decide whether Petitioner violated the speed restriction established by SSI Item 13.7.2.

The text of SSI Item 13.7.2 states that, in the event of a detector failure, the train is to “proceed not exceeding 30 mph.” SSI Item 13.7.2 is ambiguous regarding exactly where the speed restriction is to begin. Although MOP Ibarra testified during the hearing that the steps must be taken immediately to comply with the speed restriction, Tr. 82, this construction is not readily apparent from the text of SSI Item 13.7.2. Moreover, even if the Board interpreted SSI Item 13.7.2 to require “immediate steps” to comply with the speed restriction, the Board would still view the instruction as ambiguous because the Board cannot objectively determine the specific point where Petitioner violated the SSI causing a revocable event. Consequently, the Board decides that, as a matter of law, UP has failed to present substantial evidence that a revocable event occurred when Petitioner did not reduce the speed of Train MLDHO-02 to 30 mph.

Conclusion

Based on the above findings, 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 **FEB 21 2012** _____.



Richard M. McCord
Chairman,
Locomotive Engineer Review Board

SERVICE LIST EQAL 2011-24


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

Mr. D. R. Denecamp Jr.
5594 South Foster Road
San Antonio, TX 78222

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

Ms. Christine Hampton
Union Pacific Railroad Company
1400 Douglas Street, Mailstop 1030
Omaha, NE 68179

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



Diane Filipowicz
Administrative Assistant

FEB 21 2012

Date

enc: Post LERB Memo

cc: FRA DOCKET EQAL 2011-24

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. D. R. Denecamp Jr.
5594 South Foster Road
San Antonio, TX 78222

EQAL 2011-24

2. Article Number

(Transfer from service label)

7008 3230 0002 3925 7986

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

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? YesIf YES, enter delivery address below: No

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1. Article Addressed to:

Ms. Christine Hampton
Union Pacific Railroad Company
1400 Douglas Street, Mailstop 1030
Omaha, NE 68179

EQAL 2011-24

2. Article Number

(Transfer from service label)

7008 3230 0002 3925 7962

PS Form 3811, February 2004

Domestic Return Receipt

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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

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

EQAL 2011-24

2. Article Number

(Transfer from service label)

7008 3230 0002 3925 7979

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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

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

EQUIL 2011-242. Article Number
(Transfer from service label)

7008 3230 0002 3925 7955

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X Agent Addressee

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If YES, enter delivery address below: No

3. Service Type

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4. Restricted Delivery? (Extra Fee)

 Yes