

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

Locomotive Engineer Review Board

Decision Concerning
Norfolk Southern Corporation's
Revocation of Mr. B. T. Beasley's
Locomotive Engineer Certification

FRA Docket Number EQAL-2011-26

Decision

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of Norfolk Southern Corporation (NS) to revoke Mr. B. T. Beasley'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 NS's decision to revoke the Petitioner's certification was proper for the reasons set forth below.

Background

On March 29, 2011, while operating Train 74JA328 (Train 74J) at 24th Street Interlocking on a CSX Transportation (CSXT) connection track in Birmingham Alabama, Petitioner allegedly passed a stop signal without authority. NS alleges that Petitioner violated its operating rules and, consequently, Federal railroad safety law 49 C.F.R. § 240.117(e)(1), failing to control a train or locomotive in accordance with a signal indication that requires a complete stop before passing.

A petition was timely filed with FRA on August 8, 2011, requesting that FRA review NS's decision to revoke Petitioner's certification. The petition asserts that the revocation was improper for the following reasons:

- (1) NS failed to produce substantial evidence that Petitioner violated §240.117(e)(1). Petitioner was in compliance with NS Operating Rule 236 and 49 CFR § 240.117(e)(1).
- (2) An intervening cause prevented or materially impaired the locomotive engineer's ability to comply with the railroad operating rule or practice.
 - (a) Petitioner had never operated a train, as either an engineer or engineer trainee, over this area prior to this event.

- (b) Petitioner had an obstructed view of the signal due to brush and a signal bungalow.

Pursuant to 49 C.F.R. § 240.405(b) and (c), a copy of the petition was sent to NS on August 23, 2011, and the railroad was afforded an opportunity to comment. NS filed a timely response with FRA on October 20, 2011. The response asserts that the revocation was proper for the following reasons:

- (1) NS presented substantial evidence that the Petitioner violated the carrier's operating rules and the Federal regulations.
 - (a) NS, relying upon Petitioner's own testimony and statements from the charging officer, established that the train passed the stop signal by approximately 82 feet.
 - (b) The signal was visible at 321 feet away; however, Petitioner failed to apply the brake until the train was 193 feet from the signal.
 - (c) Petitioner failed to fully apply the independent brake until the train was 16 feet past the signal.
 - (d) Petitioner failed to apply the emergency brake once the signal came into view.
 - (e) During the hearing, Petitioner stated that he could clearly identify the signal.
 - (f) Petitioner stated that he simply forgot about the signal.
- (2) Petitioner failed to establish that an intervening cause existed.
 - (a) Petitioner's sight distance was not obstructed by brush or a signal bungalow.
 - i. NS conducted a sight distance re-enactment March 29, 2011, establishing that Petitioner's sight distance to the Stop signal was 321 feet.
 - ii. Petitioner took no exception to the signal in his testimony.
 - iii. Petitioner stated that he simply forgot about the signal.

- (b) Petitioner's alleged inexperience on this territory did not excuse him from complying with NS rules and Federal regulations.
 - i. It was Petitioner's responsibility to become familiar with the territory and governing signals.
 - ii. Petitioner previously had operated on this territory as a conductor.
 - iii. Petitioner had assured his conductor that he was familiar with the territory.
 - iv. If Petitioner was not comfortable with the territory, he should have informed his supervisor.

Locomotive Engineer Review Board's Determination

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

- (1) Petitioner became an engineer on March 25, 2011. Tr. at 11.
- (2) On March 29, 2011, prior to boarding Train 74J, Petitioner had a job briefing. During the briefing, Petitioner did not discuss the signal at 24th Street interlocking and later stated that he had forgotten about the signal. Tr. at 12, 27-28.
- (3) There was no exception taken to the proper functioning of the brakes prior to the train's departure. Tr. at 43.
- (4) Petitioner told the conductor that he was familiar with the territory. Tr. at 61.
- (5) Petitioner boarded Train 74J at 10th Avenue. Tr. at 24.
- (6) Petitioner received a restricting signal at 2nd Avenue. Tr. at 12, 18.
- (7) Petitioner was traveling at eight miles per hour while operating on the curve towards 14th Street. Tr. at 19, 62.
- (8) Petitioner was going around a curve toward 14th Street and saw a red dwarf signal, 310F, after the 24th Street interchange box at the CSXT connection track in Birmingham, Alabama. Tr. at 24, 66, Carrier Ex. 2.
- (9) The conductor saw the red dwarf signal and announced the signal to the Petitioner. Tr. at 14.
- (10) Once Petitioner reached the signal bungalow, there were no signal obstructions. Tr. at 65-66.

- (11) Petitioner applied the automatic brake and bailed off the independent brake. Tr. at 24, 62.
- (12) Petitioner did not apply the emergency brake. Tr. at 61.
- (13) Train 74J came to rest with the lead locomotive, NS 7719, approximately 82 feet past the signal with the short hood forward. Tr. at 11, 13, 61.
- (14) This was Petitioner's first time operating over this territory as an engineer. Tr. at 76.
- (15) Petitioner had operated over this territory as a conductor for approximately 2 years. Tr. at 46, 63.
- (16) Petitioner did not notify anyone of concerns about operating over this territory. Tr. 44-45.
- (17) NS sent a hearing notice to the Petitioner dated April 6, 2011, explaining that a hearing was being held for a potential violation of Federal regulations. Carrier Hearing Letter.
- (18) A formal hearing was held on April 14, 2011. Tr. at 1, Carrier Decision Letter.

(19) **Rule 236 Signals Requiring a Stop**

A train or engine approaching a fixed signal requiring a Stop must stop before any part of the equipment passes the signal. Carrier Ex. 3.

(20) **Restricted Speed**

A speed that will permit stopping within half the range of vision, short of train, engine, obstruction, railroad car, men or equipment fouling track, any signal requiring a stop, derail or switch lined improperly and looking out for a broken rail, but not exceeding 15 MPH. Carrier Ex. 2.

(22)

C-1. Qualifications

Employees called to perform service as Conductor or Engineer over any portion of the railroad for which they are not qualified must immediately inform their supervisor. Carrier Ex. 9.

(21) NS issued a decision letter on April 29, 2011. Carrier Decision Letter.

Analysis of the Petition

In reviewing petitions of revocation decisions, the Board considers four issues in determining whether decertification was proper under FRA's regulations. See 49 C.F.R. § 240.405(f). First, whether substantial evidence exists to support the railroad's factual findings in its decision. See 58 Fed. Reg. 18982, 19001 (1993). Second, when considering procedural disputes, the Board will "determine whether substantial harm was caused the petitioner by virtue of the failure to adhere to the dictated procedures for making the railroad's decision. A finding of substantial harm is grounds for reversing the railroad's decision." Id. To establish grounds upon which the Board may grant relief, Petitioner must show: (1) that procedural error occurred, and (2) the procedural error caused substantial harm. Id. Third, whether the railroad's legal interpretations are correct based on a de novo review. Id. Finally, 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). Based on its review of the information provided, the Board finds that there is substantial evidence to support NS's decision and that no intervening cause existed.

The Board concluded that NS presented substantial evidence that Petitioner failed to stop Train 74J prior to passing the dwarf signal at 24th Street, 310F, displaying a stop signal, as required. The hearing record shows that Train 74J came to a stop with the lead locomotive approximately 82 feet past the signal. Petitioner saw the stop signal and failed to take the necessary steps, such as applying the emergency brake, to stop the train prior to reaching the signal. The Board concluded that Petitioner could have handled Train 74J, which was traveling at 8 m.p.h., in a manner that would have allowed him to bring the train to a stop prior to reaching the stop signal.

Finally, the Board finds that Petitioner's claim of an intervening cause is without merit. Petitioner claimed that brush and a signal bungalow limited his sight distance. However, his contention is not supported by the evidence in the record. Petitioner admits he saw the signal and simply forgot about its existence prior to that time. Even if brush and the signal box had limited Petitioner's sight distance, Petitioner admitted he was able to see the signal prior to passing it and could have applied the emergency brakes. Petitioner also argued that he had never operated over this territory as an engineer. The record shows that, while Petitioner had not operated over this territory as an engineer, he had operated over the territory as a conductor for approximately two years. While Petitioner may not have operated over the territory as a conductor for some time, under NS operating rules that implement a Federal requirement found in 49 C.F.R. § 240.307(c), he was obligated to raise any concerns with NS personnel, which he failed to do. Finally, prior to operating Train 74J that day, he assured the conductor that he was comfortable with operating the train. Consequently, the Board hereby denies the petition in accordance with the provisions of 49 C.F.R. Part 240.

Issued this day in Chicago, IL FEB 28 2012.



Richard M. McCord
Chairman,
Locomotive Engineer Review Board

SERVICE LIST EQAL-2011-26

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.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

T.P. Gholson
Assistant General Chairman
United Transportation Union
427 West Broadway Avenue
Maryville, Tennessee 37801

Barry Todd Beasley
208 Ridgewood Road
Prattville, Alabama 36067

Jeremy D. Moore
Director Labor Relations
Norfolk Southern Corporation
223 East City Hall Avenue
Norfolk, Virginia 23510



Diane Filipowicz
Administrative Assistant

FEB 28 2012

Date

enc: Post LERB Memo

cc: FRA Docket EQAL-2011-26

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:

T.P. Gholson
 Assistant General Chairman
 United Transportation Union
 427 West Broadway Avenue
 Maryville, Tennessee 37801

EQAL 2011-26

2. Article Number
 (Transfer from service label)

7008 3230 0002 3925 8730

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

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:

Barry Todd Beasley
 208 Ridgewood Road
 Prattville, Alabama 36067

EQAL 2011-26

2. Article Number
 (Transfer from service label)

7008 3230 0002 3925 9386

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

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:

Jeremy D. Moore
 Director Labor Relations
 Norfolk Southern Corporation
 223 East City Hall Avenue
 Norfolk, Virginia 23510

EQAL 2011-26

2. Article Number
 (Transfer from service label)

7008 3230 0002 3925 9393

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes