

**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. W. J. Brenton's
Locomotive Engineer Certification

FRA Docket Number EQAL 2011-30

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. W. J. Brenton'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 Petitioner's certification was proper for the reasons set forth below.

Background

On June 27, 2011, while operating forward face lead locomotive NS2692 on NS train 375D824 near Mount Carmel, Indiana, Petitioner allegedly operated 256 feet passed a westbound stop signal located at MP 150.2. The train consisted of four locomotives, 31 cars, and measured 2,112 feet long and had a total tonnage of 1,792 tons.

According to the event recorder data, Petitioner's train proceeded at 24 MPH in throttle 3 position when the service brake was applied 436 feet in advance of the signal and the dynamic brake was not applied. (Hearing Exhibit 24). The forward-facing on-board "real view camera" and annotated satellite imaging indicate that Petitioner's train was positioned on the outside of a left curve where the conductor could have previewed the signal and track conditions ahead of the train. (Hearing Exhibits 11 & 18).

NS charged Petitioner with a violation of 49 C.F.R. § 240.117(e)(1), for "[f]ailure to control a locomotive or train in accordance with a signal indication, excluding a hand or a radio signal indication or a switch, that requires a complete stop before passing it." (Hearing Exhibit 1).

A combined railroad discipline and Federal certification hearing was conducted on August 2, 2011, and Petitioner was notified that his certificate was revoked by letter dated August 15, 2011. By petition and letter dated September 26, 2011, and received by FRA on September 30, 2011, Petitioner

requested that FRA review NS's decision to revoke his certification. Petitioner does not contest that he operated past the stop signal; however, Petitioner asserts that the revocation was improper for the following reasons:

- (1) As the train entered into a left hand curve with Petitioner operating from the right side of the cab, Petitioner's visibility was obstructed by vegetation, which limited the sight distance.
- (2) Petitioner had a restricted view of the signal due to atmospheric conditions (sun light).
- (3) There were mechanical issues involving a number of defective brakes that failed to apply throughout the train.
- (4) Petitioner had inadequate training on this territory prior to this incident.

Pursuant to 49 C.F.R. § 240.405(b) and (c), a copy of the petition was sent to NS. NS did not submit a reply to the petition.

Board's Determination

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

- (1) On June 27, 2011, while operating lead locomotive NS2692 on NS train 375D824 near Mount Carmel, Indiana, Petitioner operated 256 feet past a westbound stop signal located at MP 150.2.
- (2) NS charged Petitioner with a violation of 49 C.F.R. § 240.117(e)(1), for "[f]ailure to control a locomotive or train in accordance with a signal indication, excluding a hand or a radio signal indication or a switch, that requires a complete stop before passing it."

Analysis of the Petition

The Petition does not dispute, and Petitioner admits (Tr. at 49), that he violated NS's operating rules and practices and 49 C.F.R. § 240.117(e)(1) by failing to stop at the signal located at MP 150.2 near Mount Carmel, IN. Instead, Petitioner asserts that multiple intervening causes prevented or materially impaired him from complying with the stop signal. Section 240.307(i)(1) provides that a railroad shall not revoke an engineer's certification "if sufficient evidence exists to establish that 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" The Board finds that no intervening cause prevented or materially impaired Petitioner from complying with the stop signal at MP 150.2 near Mount Carmel, IN.

First, Petitioner asserts that as the train entered into a left hand curve with Petitioner operating from the right side of the cab, visibility was obstructed by vegetation, which limited the sight distance.

However, the -camera and -satellite image indicate that Petitioner's train was positioned outside of a left curve where he could have previewed the signal and track conditions ahead of the train. (Hearing Exhibits 11 & 18). Second, Petitioner also asserts that he had a restricted view of the signal due to sun light blocking his view; however, evidence provided at the hearing indicates that the signal had sun hoods and thus sunny conditions should not have played a role in Petitioner operating past the stop signal. (Hearing Exhibit 20). Third, Petitioner claims that there were mechanical issues involving a number of defective brakes that failed to apply throughout the train that contributed to the incident. Petitioner failed to provide evidence at the hearing that proved the existence of defective brakes, much less whether defective brakes prevented or materially impaired his ability to comply with § 240.117(e)(1). Finally, Petitioner claims that he had not received adequate training on the particular territory prior to this incident. Petitioner passed an approach signal which required him to immediately reduce to medium speed and be prepared to stop at the next signal. Petitioner failed to provide evidence at the hearing that proved that a lack of training on the territory caused him to not comply with the standard procedure regarding approach and stop signals. Furthermore, Petitioner accepted the assignment to operate that train and did not notify NS that he was unqualified to perform the anticipated service as required under § 240.305(c).

Conclusion

Based on its review of the record and the above findings and conclusions, the Board hereby denies the petition in accordance with the provisions of 49 C.F.R. Part 240.

Issued in Chicago, IL on APR 13 2012.



Richard M. McCord
Chairman,
Locomotive Engineer Review Board

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.

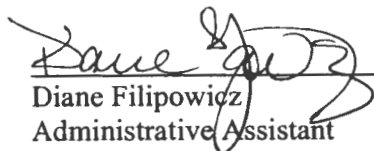
SERVICE LIST EQAL 2011-30

SENT CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. W. J. Brenton
208 N. Arrowhead Drive
Petersberg, IN 47567

Mr. Mark H. Cook
General Chairman
UTU GCA 898
427 West Broadway Ave.
Maryville, TN 37801

Mr. Jeremy D. Moore
Director of Labor Relations
Norfolk Southern Corporation
223 East City Hall Avenue
Norfolk, VA 23510-1728



Diane Filipowicz
Administrative Assistant

APR 13 2012

Date

enc: Post LERB Memo

cc: FRA DOCKET EQAL 2011-30

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. W. J. Brenton
208 N. Arrowhead Drive
Petersberg, IN 47567

EQUAL 2011-30

2. Article Number

(Transfer from service label)

7011 0470 0002 3685 7546

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

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 Agent Addressee

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1. Article Addressed to:

Mr. Mark H. Cook
General Chairman
UTU GCA 898
427 West Broadway Ave.
Maryville, TN 37801

EQUAL 2011-30

2. Article Number

(Transfer from service label)

7011 0470 0002 3685 7553

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1. Article Addressed to:

Mr. Jeremy D. Moore
Director of Labor Relations
Norfolk Southern Corporation
223 East City Hall Avenue
Norfolk, VA 23510-1728

EQUAL 2011-30

2. Article Number

(Transfer from service label)

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C. Date of Delivery

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

3. Service Type

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4. Restricted Delivery? (Extra Fee)

 Yes