

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

Locomotive Engineer Review Board

Decision concerning the Canadian National Railroad's Revocation of  
Mr. J. Matteson's Locomotive Engineer Certification

FRA Docket Number EQAL-2011-32

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**Decision**

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of the Canadian National Railroad (CN) to revoke Mr. J. Matteson'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 CN's decision to revoke Petitioner's certification was improper for the reasons set forth below.

**Background**

On the evening of June 30, 2011, Petitioner was operating a single light locomotive accompanied by a conductor in the cab. The crew's instructions were to turn the locomotive and couple onto a secured standing train on a controlled siding at Pokegama Yard, near Superior, WI. After coupling the locomotive to the train, Petitioner and conductor were relieved by an outbound crew and then returned to the yard office. In the yard office, Petitioner was contacted by a CN Rail Traffic Controller ("RTC") who inquired what signal aspect was displayed when the locomotive entered the siding. Petitioner responded that he had observed and accepted a "Restricting Signal" indication. Petitioner was then informed by the RTC that he had passed a "Stop Signal." Petitioner was then met by an Assistant Trainmaster in the yard office who removed him from service. CN asserts that Petitioner violated Federal railroad safety law 49 C.F.R. § 240.117(e)(1), prohibiting Petitioner from passing a stop signal without authority.

After a hearing was held on July 19, 2011, CN notified Petitioner by letter dated July 29, 2011, that his certificate was revoked for passing a stop signal without authority. A petition was timely filed with FRA on October 12, 2011, by the United Transportation Union on behalf of Petitioner, requesting that FRA review CN's decision to revoke Petitioner's certification. The petition asserts that the revocation was improper because:

- (1) CN failed to: provide substantial evidence to prove that a stop signal was displayed when Petitioner operated his locomotive into the siding at Pokegama Yard; conduct a physical inspection of the signal; or, produce a witness with knowledge of the Computerized Train Dispatching System (TMDS) who could interpret log data

related to the signal. In addition, the results of the reenactment conducted by CN support Petitioner's argument that the route was lined for movement;

- (2) Petitioner was not given a fair and impartial hearing. CN and the hearing officer denied Petitioner's request to have the RTC, who on behalf of CN accused Petitioner of passing a stop signal, testify during the hearing. In addition, other witnesses who would have testified that signal abnormalities had occurred at similar signals near Pokegama Yard around the same time as Petitioner's alleged noncompliance, were not permitted to testify; and,
- (3) CN did not charge the Petitioner with a violation of the CN rule that requires a stop at a "Stop Signal" indication, US Operating Rule #850- Where a Stop Must Be Made.

Pursuant to 49 C.F.R. § 240.405(b) and (c), a copy of the petition was sent to CN, and the railroad was afforded an opportunity to comment. CN's response was received by FRA on November 30, 2011.

#### CN's Response

CN responded to Petitioner's assertions by arguing that CN presented substantial evidence at the hearing to show that a stop signal was displayed when Petitioner operated his locomotive into the siding at Pokegama Yard. The field download showed the signal coded to a stop indication followed by occupancy of the control point without authority. CN did not respond to Petitioner's second or third assertions.

#### **Analysis of the Petition**

Petitioner's first assertion, that CN failed to prove that a stop signal was displayed when Petitioner operated his locomotive into the siding at Pokegama Yard, raises a factual issue. Accordingly, "[w]hen considering factual issues, the Board will determine whether there is substantial evidence to support the railroad's decision, and a negative finding is grounds for dismissal." 58 Fed. Reg. 18982, 19001 (April 9, 1993).

The Board finds that petitioner's first assertion has merit. Both Petitioner and the conductor, who personally observed the signal aspect at the time of the alleged noncompliance, testified that they received a restricting signal and not a stop signal. See Tr. at 117, 119, and 122. In addition, the reenactment of the incident that was conducted by CN supports Petitioner's argument that the route was lined for movement, and therefore not a stop signal. See Tr. 93, and 129.

CN relied on only the TMDS log data to determine that a stop signal was displayed. A knowledgeable witness is needed to properly interpret the TMDS log data. No witnesses who had direct knowledge of the TMDS log data testified at the hearing. See Tr. at 89. In addition, it is unclear whether a physical inspection of the field devices and components related to the signal was conducted by CN. See Tr. at 95 and 96. Nevertheless, no evidence of a physical inspection was provided at the hearing. See Tr. at 93. A physical inspection would have revealed the condition and potential reliability of the devices and components. The TMDS log data, without a

witness with direct knowledge of the data that is needed to interpret the data, does not amount to substantial evidence of the signal aspect.

Because the Board is granting the petition based on Petitioner's first assertion, there is no need to address the remaining assertions at this time. Based on the above findings and conclusions, 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 MAR 15 2012.

A handwritten signature in black ink, appearing to read "Richard M. McCord", written over a horizontal line.

Richard M. McCord  
Chairman,  
Locomotive Engineer Review Board

SERVICE LIST EQAL 2011-32

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

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. J. Matteson  
3938 Hwy. 99  
Aurora, MN 55705

Mr. S. L. Moerke  
Chairman  
Local Committee of Adjustment, Engineers  
United Transportation Union  
171 Olson Rd.  
Esko, MN 55733-9414

Mr. Kevin Brockman  
Senior Supervisor Locomotive Engineers  
Canadian National Railroad  
17641 S. Ashland Ave.  
Homewood, IL 60430

  
for Diane Filipowicz  
Administrative Specialist

**MAR 15 2012**

Date

enc: Post LERB Memo

cc: FRA Docket EQAL 2011-32

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1. Article Addressed to:  <p style="text-align: center;"><b>Mr. J. Matteson</b>  <b>3938 Hwy. 99</b>  <b>Aurora, MN 55705</b></p>	B. Received by (Printed Name)	C. Date of Delivery
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1. Article Addressed to:  <p style="text-align: center;"><b>Mr. Kevin Brockman</b>  <b>Senior Supervisor Locomotive Engineers</b>  <b>Canadian National Railroad</b>  <b>17641 S. Ashland Ave.</b>  <b>Homewood, IL 60430</b></p>	B. Received by (Printed Name)	C. Date of Delivery
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EQAL: 2011-32	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
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