

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

Locomotive Engineer Review Board

Decision Concerning  
Union Pacific Railroad Company's  
Revocation of Mr. R. K. Willard's  
Locomotive Engineer Certification

**FRA Docket Number EQAL 2011-37**

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**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. R. K. Willard's (Petitioner) locomotive engineer certification (certification) in accordance with the provisions of Title 49, Part 240 of the Code of Federal Regulations. The Board hereby grants Mr. Willard's petition for the reasons set forth below.

**Background**

On June 28, 2011, at approximately 1730 hours, Petitioner was operating southbound train ASPEGR-28 on the Palestine Subdivision, a double main track in Centralized Traffic Control territory, with a conductor. Petitioner and his conductor received an "Approach" indication on the distant signal to CP H225 and were proceeding at a speed of approximately 18 mph, prepared to stop at the Control Point. As the signal at CP H225 came into view, the conductor claimed that he observed and verbally communicated a "Diverging Clear" indication at CP H225 that was confirmed by Petitioner. However, as Petitioner and his conductor neared the Control Point, the crew discovered that the signal at CP H225 was displaying a "red" over "dark" signal aspect. When the crew also observed that the switch points at CP H225 were lined for straight track on which a train was standing, Petitioner placed the train in emergency and came to a stop approximately 100 feet beyond the signal at CP H225.

On June 28, 2011, Petitioner's certification was suspended for failure to control a train in accordance with a signal indication that requires a complete stop before passing it, in violation of 49 C.F.R. § 240.117(e)(1). After a Federal certification hearing was held by UP on August 11, 2011, Petitioner received written notification dated August 11, 2011 that his certification had been revoked.

A petition was timely filed with FRA on November 1, 2011, by the Brotherhood of Locomotive Engineers and Trainmen on behalf of Petitioner, requesting that FRA review UP's decision to revoke his certification. The petition asserts that the revocation was improper because:

- 1) Petitioner and his conductor have steadfastly avowed that the lower signal aspect at CP H225 "dropped out", changing from a "Diverging Clear" (red over green) indication to a "Stop" (red over dark) indication at a point about 15-20 car lengths in advance of the signal.
- 2) When the on-scene officers boarded Petitioner's locomotive, the conductor insisted that they download the video from the Track Imaging Recorders (TIR) on their lead locomotive, as well as the TIR on the lead locomotive of the southbound train that had stopped on adjacent

main track number one, in order to verify the assertions of Petitioner and his conductor regarding the signal aspects that they had observed upon approach to CP H225.

- 3) The timeframe reflected in the Computer Aided Dispatcher (CAD) report submitted by UP Manager of Operating Practices B. Marmorato was severely condensed. The CAD report, which only reflected electronic requests made by the dispatcher for changes to the signals and switches within his/her territory during the time span from 1706 hours to 1741 hours, did not include the last "request" made by the dispatcher of the home signal at CP H225 prior to the occupation of the circuit at CP H225 by Petitioner's train. In addition, there was only five (5) minutes' worth of report after Petitioner's train occupied the circuit at CP H225 and, as a result, no record of signal activity and performance after repairs were made by signal employees on the scene.
- 4) UP did not introduce the results of any post-incident testing performed on the signal system in the vicinity of CP H225 into the hearing record. Furthermore, no evidence was provided that post-incident testing was ever performed.

Pursuant to 49 C.F.R. § 240.405(b) and (c), a copy of the petition was sent to UP. The railroad elected to comment and was required by 49 C.F.R. § 240.405(d)(2) to provide Petitioner with a copy of the materials submitted to FRA.

#### **UP's Response**

UP responded to Petitioner's assertions by arguing that:

- 1) UP Manager of Signal Maintenance M. C. Miner testified that the CAD log does not show a signal request by the dispatcher of the signal at CP H225 for Petitioner's train at or before the time of the stop signal violation. (See Tr. at 54.)
- 2) UP Senior Manager of Train Operations C. E. Toussaint (MTO Toussaint) testified that he and UP Manager of Operating Practices N.F. Marmorato looked at the TIRs obtained from Petitioner's locomotive, as well as the lead locomotive on the southbound train that had stopped on main track one, but the images did not yield any substantive information. (See Tr. at 61-62.)
- 3) UP Manager of Operating Practices N. F. Marmorato testified that, based upon the documents that he furnished and the outcome of his investigation, a signal was never called at CP H225 for Petitioner's train.
- 4) UP Manager of Operating Practices L. D. Vogel re-enacted the incident the next day at the same time of day from the same location on a locomotive.

#### **Locomotive Engineer Review Board's Determination**

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

- 1) On June 28, 2011, at approximately 1730 hours, while Petitioner was operating southbound train ASPEGR-28 with a conductor on the Palestine Subdivision, Petitioner's train failed to stop short of an absolute signal displayed at CP H225. At the time of the incident, Petitioner and his conductor asserted that the signal at CP H225 had previously displayed a "Diverging Clear" indication (a more permissive aspect than the track occupancy conditions warranted).

- 2) On June 28, 2011, Petitioner's certification was suspended for failure to control a train in accordance with a signal indication that requires a complete stop before passing it, in violation of 49 C.F.R. § 240.117(e)(1).
- 3) A Federal certification hearing was held on August 11, 2011. Petitioner received written notification dated August 11, 2011 that his certification had been revoked.
- 4) By letter dated January 3, 2012, Petitioner filed a timely appeal of UP's revocation decision.

### Analysis

"When 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 reversal." See 58 Fed. Reg. 18982, 19001 (1993). Petitioner's assertions allege that there are factual issues present in this case related to whether the signal at CP H225 "dropped out" upon the approach of Petitioner's train. In reviewing these assertions, the Board notes that the conductor's log is consistent with Petitioner's assertion that the signal at CP H225 was displaying a more permissive aspect than track occupancy conditions warranted. However, the TIR images downloaded from Petitioner's train were determined by UP witness, MTO Toussaint, to be inconclusive for purposes of determining the signal aspect at issue. (See Tr. at 61.) Moreover, UP did not perform any post-incident field testing on the signal at CP H225 or provide vital logic to prove that an absolute signal was displayed at CP H225 upon the approach of Petitioner's train. Instead, it appears that UP based its revocation decision on non-vital logic contained in an abbreviated CAD report. Therefore, after reviewing the factual issues presented, the Board finds an absence of substantial evidence in support of UP's decision and 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 MAY 10 2012.



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Richard M. McCord  
Chairman,  
Locomotive Engineer Review Board

**SERVICE LIST EQAL 2011-37**

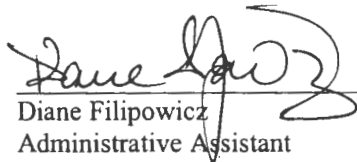
A copy of the Locomotive Engineer Review Board decision in this matter has been sent by certified mail and return receipt requested to each person shown below.

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

Mr. R. K. Willard  
1640 East T.C. Jester #225  
Houston, TX 77008

Mr. Warren Dent  
General Chairman  
Brotherhood of Locomotive Engineers and Trainmen  
Union Pacific Railroad – Southern Region  
607 W. Harwood Road  
Hurst, TX 76054

Ms. Rebecca Hernandez  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, NE 68179

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

**MAY 10 2012**

\_\_\_\_\_  
Date

enc: Post LERB Memo

cc: FRA DOCKET EQAL 2011-37

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	A. Signature <span style="float: right;"><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</span> <b>X</b>	
1. Article Addressed to:	B. Received by (Printed Name)	C. Date of Delivery
<p style="text-align: center;">Mr. R. K. Willard 1640 East T.C. Jester #225 Houston, TX 77008</p>	D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
2. Article Number (Transfer from service label)	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.	
<p style="text-align: center;"><i>EQAL 200 2011-37</i></p>	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540		

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1. Article Addressed to:	B. Received by (Printed Name)	C. Date of Delivery
<p style="text-align: center;">Mr. Warren Dent General Chairman, BLE&amp;T Union Pacific Railroad – Southern Region 607 W. Harwood Road Hurst, TX 76054</p>	D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
2. Article Number (Transfer from service label)	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.	
<p style="text-align: center;"><i>EQAL 2011-37</i></p>	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
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1. Article Addressed to:	B. Received by (Printed Name)	C. Date of Delivery
<p style="text-align: center;">Ms. Rebecca Hernandez Union Pacific Railroad Company 1400 Douglas Street Omaha, NE 68179</p>	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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<p style="text-align: center;"><i>EQAL 2011-37</i></p>	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
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