

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

Locomotive Engineer Review Board

Decision concerning the Union Pacific Railroad Company's
Revocation of Mr. J. D. Shull's Locomotive Engineer Certification

FRA Docket No. EQAL-2011-39

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 J. D. Shull'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 UP's decision to revoke Petitioner's certification was proper for the reasons set forth below.

Background

By Notice of Investigation dated October 17, 2011 (Notice), UP requested that Petitioner report for a "formal investigation to develop facts and place individual responsibility, if any, in connection with the charge that while working as Hostler, on the 0404-13 at Kansas City, Kansas, near Milepost 1, KC Metro Subdivision, at approximately 1427 hours, on October 13, 2011, you allegedly failed to stop your train before any part of your train or engine passed CPK001 while it was displaying a Stop 1 indication." The Notice also notified Petitioner that he was being withheld from service pending the results of the investigation and that his certification was suspended.

UP convened an investigation and hearing on October 25, 2011. By Post-Hearing Notification of Certificate Revocation dated November 1, 2011, UP informed Petitioner that Petitioner's certification was being revoked pursuant to 49 C.F.R. § 240.117(e)(1) for failing to control a locomotive in accordance with a stop signal.

By a timely filed petition for review (Petition) dated November 7, 2011, Petitioner requests that the Board reinstate his engineer's certification. The Petition asserts that the revocation was improper because:

(1) UP "failed to determine if there was any possibility of Mr. Shull's claim that he had a proceed signal and the signal then 'dropped' to stop. [UP] entered the investigation only with the information they desired to be entered into the investigation and did not even

have a qualified signal department personnel available as a witness to answer such questions”; and

(2) Petitioner, who was operating as a hostler and pilot, was working with a helper who was not familiar with the territory being operated over and who had “just recently been recalled from a three year furlough.”

Pursuant to 49 C.F.R. §§ 240.405(b) and (c), FRA sent a copy of the Petition to UP, which was afforded an opportunity to comment. UP responded to the Petition by letter dated January 11, 2012 (“UP Response”). UP responded to the Petition by arguing that:

(1) The evidence and testimony indicates that Petitioner had a restricting signal prior to passing the stop signal which was stop the entire time; and

(2) The helper did not prevent Petitioner from stopping for the signal.

Board’s Determinations

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

1. On October 13, 2011, Petitioner was serving as engineer for hostling job 0414-13 in Kansas City, Kansas. Tr. at 35, 112-113.
1. The train crew consisted of Petitioner and a hostler helper. Tr. at 34-35, 127.
2. While moving locomotives from Neff Yard, in Kansas City, Missouri to 18th Street Yard in Kansas City, Kansas, on the Mainline Track #1, near Milepost 1, on the KC Metro Subdivision, the crew passed an “approach” signal which required them to be prepared to stop at the next signal. UP Response at Ex. 3; Tr. at 38, 124-125.
3. After Petitioner called out a “lunar signal,” after the approach signal, the hostler helper looked for a lunar signal but never saw one. The hostler helper only saw a red signal. Tr. at 132-133; see also Tr. at 93, 107.
4. Petitioner “thought” that he had a favorable signal at the next signal (*i.e.*, CPK001), but when the helper asked if the CPK001 signal was theirs, Petitioner looked again and saw that the signal was red. UP Response at Ex. 3; Tr. at 71, 77, 92, 116, 118-119, 121, 122, 130, 132-133, 140.
5. After the helper asked about a red signal ahead, Petitioner placed the train into emergency. UP Response at Ex. 3.
6. When the train came to a stop, the lead locomotive and approximately half of the second locomotive were past the signal CPK001. Tr. at 35, 88, 89.

7. The CAD log presented at the hearing showed that signal CPK001 did not receive a request from the dispatcher to line Hostler job 0414-13 beyond the signal thus indicating that the signal was displaying a stop indication and did not drop in front of Petitioner. Tr. at Ex. 8; Tr. at 48.
8. The crew was not lined past the CPK001 signal which indicates that the signal displayed a stop signal. Tr. at 137.

Analysis of the Petition

The Petition does not dispute, and Petitioner admits (Tr. at 120-121), that he violated UP's operating rules and practices and 49 C.F.R. § 240.117(e)(1) by failing to stop at the signal at CPK001 on the KC Metro Subdivision. However, Petitioner asserts that two intervening causes prevented or materially impaired him from complying with the stop signal; namely that the signal dropped in front of Petitioner and that the hostler helper, whom Petitioner was familiarizing with the territory, was not familiar with the territory being operated over and had just recently been recalled from a three year furlough. 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 signal at CPK001. Although Petitioner claims that the signal dropped in front of him, UP has provided substantial evidence that the signal did not drop out but rather was missed by Petitioner until it was too late to stop the train in time. Following the incident, Petitioner stated that he "thought" he had a favorable signal at CPK001, but when the helper asked if the CPK001 signal was theirs, Petitioner looked again and saw that the signal was red. Further, the hostler helper's testimony contradicts Petitioner's claims. After Petitioner called out a "lunar signal," the hostler helper look for a lunar signal but never saw one. Instead, the hostler helper testified that he only saw a red signal. Tr. at 132-133; see also Tr. at 93, 107. The CAD log submitted in this case also supports UP's finding that the signal did not drop in front of Petitioner. As indicated in the log, signal CPK001 did not receive a request from the dispatcher to line Hostler job 0414-13 beyond the signal, thus the record contains substantial evidence that the signal was displaying a stop indication and did not drop in front of Petitioner.¹

The Board also finds that the hostler helper's unfamiliarity with the territory did not prevent or materially impair Petitioner from complying with the signal at CPK001. Based on the evidence presented at the hearing, it is clear that the hostler helper performed his job appropriately by attempting to confirm the signal that Petitioner had called out. The hostler

¹ Although the CAD log does not constitute vital logic evidence, the Board finds that it supports the other evidence presented in this case that signal CPK001 continually displayed a stop signal and did not drop in front of Petitioner.

helper's actions provided Petitioner with, at the very least, an opportunity to stop the train before passing the signal. The hostler helper's lack of territorial familiarity did not prevent Petitioner from complying with the stop signal.

Conclusion

Based on the above findings, the Board hereby DENIES the Petition in accordance with the provisions of Title 49, Part 240 of the Code of Federal Regulations.

Issued in Chicago, IL on MAY 02 2012.



Richard M. McCord
Chairman,
Locomotive Engineer Review Board

SERVICE LIST EQAL-2011-39

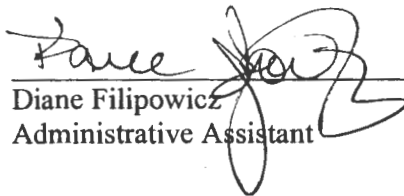
A copy of the Locomotive Engineer Review Board decision in this matter has been sent by certified mail to each person shown below.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. J. D. Shull
402 Cline
Pleasant Hill, MO 64080-1806

Mr. Ken Menges
State Director
Missouri State Legislative Board
United Transportation Union
222A Madison
Jefferson City, MO 65101

Mr. W. Scott Hinckley
Union Pacific Railroad Company
1400 Douglas St., mailstop 1180
Omaha, NE 68179-1030



Diane Filipowicz
Administrative Assistant

MAY 02 2012

Date

enc: Post LERB Memo

cc: FRA Docket EQAL-2011-39

SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.
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Mr. J. D. Shull
402 Cline
Pleasant Hill, MO 64080-1806

EQAL 2011-39

2. Article Number

(Transfer from service label)

7011 0470 0002 1248 1178

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Mr. Ken Menges, State Director
Missouri State Legislative Board
United Transportation Union
222A Madison
Jefferson City, MO 65101

EQAL 2011-39

2. Article Number

(Transfer from service label)

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1. Article Addressed to:

Mr. W. Scott Hinckley
Union Pacific Railroad Company
1400 Douglas St., mailstop 118C
Omaha, NE 68179-1030

EQAL 2011-39

2. Article Number

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