

**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. D. D. Thomas'  
Locomotive Engineer Certification

**FRA Docket Number EQAL 2011-40**

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**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. D. D. Thomas' (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 grants the petition for the reasons stated below.

**Background**

On June 18, 2011, while operating NS Train 287C918, Petitioner allegedly exceeded the maximum authorized speed of 25 miles per hour (mph) by at least 10 mph at various locations between Buffalo, NY and Conneaut, OH, causing a violation of the NS Special System Instruction SP-1 regarding speed restrictions based on placement of loaded multilevel cars in a train. See Tr. at 5, 20. The train consisted of 54 cars, including 50 empty cars and four loaded cars. See Tr. Ex. S(2). The four loaded cars were located between the empty cars and numbered 13 through 16. See Tr. P. NS Special System Instruction SP-1 states that empty multi-level trains with 40 or more cars, other than a solid block on the rear, must be restricted to a speed of 25 mph or less.<sup>1</sup>

NS charged Petitioner with a violation of 49 C.F.R. 240.117(e)(2), for "Failure to adhere to limitations concerning train speed when the speed at which the train was operated exceeds the maximum authorized limit by at least 10 miles per hour." An investigation and hearing was held on July 20, 2011, and NS notified Petitioner of the revocation of his certification by a letter dated August 3, 2011.

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<sup>1</sup> The Board notes that NS Special System Instruction SP-1 was not properly entered into evidence, however, NS has filed a copy of its operating rules, timetables, and timetable special instructions with FRA pursuant to 49 C.F.R. § 217.7.

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### **Petitioner's Assertions**

The United Transportation Union (UTU) filed a petition with FRA on behalf of Petitioner, requesting that the Board review NS' decision to revoke his certification. The petition was filed on November 28, 2011 and was timely filed. The petition asserts that the revocation was improper because:

- (1) The basis for the determination to revoke the Petitioner's certificate was a direct result of his alleged failure to reduce train speed to 25 mph when operating a train with empty cars and loads. Petitioner asserts that NS failed to provide substantial evidence "by making a general and vague statement in the letter of charge, and not providing a specific rule or regulation" regarding the maximum speed of restricted trains. See Pet. at 2. The transcript shows that time table Rule SP-1 was not allowed to be entered as evidence by the hearing officer. See Tr. at 19-21. Therefore, the charge of excessive speeding should be denied.
- (2) There were several procedural errors at the hearing. Petitioner asserts that expert and NS official witnesses were not made available to attend the hearing, the hearing officer showed bias and partiality by allowing testimony by the NS witness on evidence that had previously not been allowed, and full discovery of pertinent documents was not allowed. See Tr. at 10, 19, 21, 56.
- (3) Petitioner complied with all NS operating rules based upon the belief that his conductor had correctly informed him of the contents of the train. See Tr. at 57. However, due to improper paperwork, the train consist given to Petitioner and his conductor indicated that the first four cars were carrying loads when in fact they were not. See Tr. Ex. D. After visually inspecting those cars and finding no loads, the conductor realized that the train consist was incorrect and job briefed with the Petitioner, who proceeded to operate the train based upon the information given to him by the conductor. See Tr. at 54-57.

### **NS' Response**

Pursuant to 49 C.F.R. § 240.405(b) and (c), a copy of the petition was sent to NS on November 28, 2011. NS did not comment on the petition.

### **Board's Determination**

- (1) On June 18, 2011, while operating NS Train 287C918, Petitioner exceeded the maximum authorized speed of 25 mph by at least 10 mph at various trip locations between Buffalo, NY and Conneaut, OH causing a violation of the NS Special System Instruction SP-1, with regard to speed restrictions based on placement of empty multilevel cars in a train. See Pet. at 2; Tr. at 20; Tr. Ex. S.

- (2) The train crew consisted of Petitioner and a conductor, who reported at 0800 hours in Bison Yard. See Pet. at 2; Tr. at 17 -18; Tr. Ex. B(1), E, F.
- (3) Prior to departing the yard, the conductor received the train consist from the yardmaster. See Tr. at 47. When the Car Department finished working on the train, the conductor walked the train to inspect it. See Tr. at 48.
- (4) The conductor physically looked through the holes in the sides of the head six cars multi-level cars and saw that there was no loaded equipment. See Tr. at 48.
- (5) After checking the head six cars, the conductor discovered the train consist erroneously showed loaded multi-level cars on the head-end, in cars 1 through 4, which were actually empty. See Tr. at 48; Tr. Ex. D.
- (6) The conductor got back on the engine and told the Petitioner that there were no loads in the train and that they “were good to go.” See Tr. at 49, 54-55. The crew held a job safety briefing and decided to depart. See Pet. at 2; Tr. at 49-50, 54-55.
- (7) The loaded cars were located in positions 13-16 from the head-end and positioned between empty cars. See Tr. at 15, 17-18, 35; Tr. Ex. P.
- (8) NS Special System Instruction SP-1 regarding speed restrictions based on placement of empty multi-level cars in a train required the train not to exceed 25 mph. See Tr. at 20.
- (9) The Petitioner operated the train at speeds that exceeded 25 mph and reaching a maximum train speed of 60 mph during the trip from Buffalo, NY to Conneaut, OH. See Tr. at 21, 25; Tr. Ex. G.
- (10) At Conneaut, OH, the relief crew was provided with the consist report generated from scanned en route data showing the actual placement of the load carrying cars. See Tr. at 17.
- (11) The Road Foreman of Engines (RFE) noted the car placement exception and, when Train 287C918 arrived, informed Petitioner of the alleged violation and removed the crew from service pending a formal investigative hearing. See Tr. at 15-17.

**Analysis of the Petition**

Petitioner’s third assertion involves an intervening cause. In determining whether revocation was proper under FRA’s regulations, the Board considers 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). Petitioner argues that he should not be held responsible for the alleged violation because there were discrepancies in the train crew’s consist causing the yardmaster to build the train incorrectly.

The Board finds this assertion has merit. The conductor is responsible for the train he is assigned to. See Tr. at 55, 57; Tr. Ex. L(7). The conductor was aware that the train consist and the train make-up were inconsistent with each other but did not follow the proper procedures to reconcile the improper paperwork he received. See Tr. at 48-51, 54. Instead, the conductor concluded that the train was empty without further investigation and informed Petitioner of his conclusion, stating they were “good to go.” See Tr. at 49, 54-55, 57; Tr. Ex. E. Based upon the information supplied by the conductor that the suspect cars in the train were as empty, Petitioner operated the train at an excessive speed, unaware of the fact that the train actually contained the four loaded multi-level -carrying cars, save in a different position in the train. See Tr. at 17-19; Tr. Ex. C. The conductor’s actions were an intervening cause that prevented Petitioner from complying with the speed restriction.

Considering that the Board has decided to grant the petition, the Board declines to address Petitioner’s other assertions.

**Conclusion**

Based on the findings noted above, the Board hereby grants the petition in accordance with the provisions of 49 C.F.R. Part 240.

Issued in Chicago, IL on     JUL 09 2012    .



Richard M. McCord  
Chairman,  
Locomotive Engineer Review Board

**SERVICE LIST EQAL 2011-40**

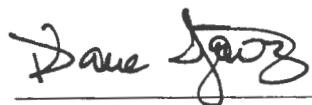
A copy of the Locomotive Engineer Review Board decision in this matter has been sent by certified mail and return receipt requested to each person shown below.

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

Mr. Darryl D. Thomas  
10971 W. Middle Road  
Lake City, PA 16423-1614

Mr. Jason Hlavtur  
Local Chairman 421 – UTU  
6361 Green Road  
Ashtabula, OH 44004

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



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

**JUL 09 2012**

\_\_\_\_\_  
Date

enc: Post LERB Memo  
cc: FRA DOCKET EQAL 2011-40

**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. Darryl D. Thomas  
10971 W. Middle Road  
Lake City, PA 16423-1614

EQAL 2011-40

2. Article Number

(Transfer from service label)

7008 3230 0002 3925 9447

PS Form 3811, February 2004

Domestic Return Receipt

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A. Signature

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 Agent Addressee

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Mr. Jason Hlavtur  
Local Chairman 421 – UTU  
6361 Green Road  
Ashtabula, OH 44004

EQAL 2011-40

2. Article Number

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

EQAL 2011-40

2. Article Number

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