

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

Locomotive Engineer Review Board

Decision Concerning
National Railroad Passenger Corporation's
Decision to Revoke Mr. S. P. Bradley's
Locomotive Engineer Certification

FRA Docket Number EQAL-2011-44

Decision

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of the National Railroad Passenger Corporation (Amtrak) to revoke the locomotive engineer certification (Certification) of Mr. S. P. Bradley (Petitioner) 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 Amtrak's decision to revoke Petitioner's Certification was proper for the reasons set forth below.

Background

On August 5, 2011, while operating Amtrak Train number 21 (train no. 21) between Chicago, Illinois and St. Louis, Illinois, Petitioner allowed train no. 21 to pass signal CP-X249, which was displaying a stop indication (the stop signal), into the siding at North Godfrey (the North Godfrey siding) on the Union Pacific Railroad Company's (UP) Springfield Subdivision without authority. The train crew consisted of Petitioner, a conductor, and an assistant conductor. Petitioner was charged with violating 49 C.F.R. § 240.117(e)(1), General Code of Operating Rules (GCOR) 1.47, 5.2.1, and 9.5, as well as various orders and instructions issued by Amtrak and UP, for failing to control a train in accordance with a signal indication that requires a stop before passing it.

By letter dated August 9, 2011, Petitioner was notified that he was to attend a formal investigation relating to the incident. After a combined railroad and Federal certification hearing was conducted on August 25, 2011, Amtrak issued a notification of certificate revocation (Revocation Notification) on September 1, 2011 that stated that Petitioner's Certification had been revoked for a period of one month.

Petitioner's Assertions

A timely filed petition, which was received by FRA on December 15, 2011, requested that FRA review Amtrak's decision to revoke Petitioner's Certification. The petition asserts that the revocation was improper for the following reasons:

- (1) Amtrak failed to provide substantial evidence that Petitioner passed the stop signal without authority in violation of 49 C.F.R. Part 240.
- (2) Amtrak failed to give due consideration to 49 C.F.R. § 240.307(i)(1), which prohibits a railroad from revoking a locomotive engineer's certification if there is sufficient evidence "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 of 49 C.F.R. Part 240.
- (3) Amtrak failed to give due consideration to 49 C.F.R. § 240.307(i)(2), which provides that a railroad does not have to revoke a locomotive engineer's certification if there is sufficient evidence to establish that the violation of 49 C.F.R. Part 240 "was of a minimal nature and had no direct or potential effect on rail safety."
- (4) Amtrak failed to satisfy the burden of proving that Petitioner's conduct did not comply with the applicable railroad operating rule or practice.

Pursuant to 49 C.F.R. § 240.405(b), (c), a copy of the Petition was sent to Amtrak on December 15, 2011, and Amtrak was afforded an opportunity to comment. Amtrak did not file a response to Petitioner's petition.

Locomotive Engineer Review Board's Determination

Based on its review of the record, the Board makes the following determinations:

- 1) On August 5, 2011, while operating train no. 21 between Chicago, Illinois and St. Louis, Illinois, Petitioner went past the stop signal without authority from the dispatcher. Tr. at 112, 116.
- 2) The train crew consisted of Petitioner, a conductor, and an assistant conductor.
- 3) Train no. 21 was governed by Form C, no. 78120 ("Form C"), which provided that: (1) the North Godfrey siding was out of service, (2) trains could only use the North Godfrey siding when authorized by the foreman or the train dispatcher, and (3) trains were governed by GCOR Rule 15.4. Tr. at 29, 51, 105-06; see also Tr. at Exhibit I. GCOR Rule 15.4 generally provides that (1) trains may not use out of service track unless authorized by the designated individual(s) and (2) trains must also receive the proper authority to pass an absolute signal displaying a stop indication to enter the out of service track. Tr. at 29-30, 51.
- 4) Prior to arriving at the North Godfrey siding, the conductor contacted the train dispatcher via cellular telephone from the body of train no. 21 and copied instructions regarding train no. 21's authority to enter the North Godfrey siding. Tr. at Exhibit E;

see also Tr. at 56, 68, 70, 75, 80. The assistant conductor delivered this information to Petitioner in a mandatory directive, which authorized train no. 21 to proceed into the North Godfrey siding. Tr. at 88.

- 5) Petitioner stopped at the stop signal at the entry point to the North Godfrey siding and then proceeded into the siding at restricted speed. Id. at 109. At this time, the train dispatcher informed the conductor that train no. 21 did not have authority to proceed past the stop signal. Id. at 60.

Analysis

Petitioner's assertions are factual in nature. "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." 58 Fed. Reg. 18982, 19001 (Apr. 9, 1993).

Petitioner's first and fourth assertions are that Amtrak did not prove by substantial evidence that Petitioner passed the stop signal without authorization, thereby violating the provisions of 49 C.F.R. Part 240 and the applicable railroad operating rule or practice. The Board finds that these assertions are without merit. There is evidence in the record that Petitioner operated train no. 21 past the stop signal at the North Godfrey siding without authority. See Tr. at 80-81, 112, 116-17. Moreover, the video from the forward facing camera that was located on the lead locomotive of train no. 21 depicted train no. 21 passing the stop signal. See id. at 20-22; see also Tr. at Exhibit D.

In Petitioner's second assertion, he maintains that he lacked first-hand knowledge of the instructions provided by the train dispatcher to the conductor relating to the stop signal because those instructions were not directly conveyed to him. Rather, those instructions were conveyed by the dispatcher to the conductor via cellular telephone. As a result, Petitioner had to rely on the information provided to him by the conductor. Petitioner therefore concludes that it was unfair to revoke his Certification.

The above argument could provide a defense if the Board agreed that there was an intervening cause. Federal regulations state 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." 49 C.F.R. § 240.307(i)(1).

The Board finds that Petitioner's second assertion lacks merit because there is evidence in the record that supports a finding that Petitioner was responsible for passing the stop signal. Petitioner's testimony during the hearing demonstrates that he knew that pursuant to Form C there was a two-step process for occupying the North Godfrey siding. Tr. at 111. That process entailed (1) obtaining authority from the designated individual(s) to occupy the North Godfrey siding and (2) receiving the proper authority to pass the stop signal. Id. The conductor had advised Petitioner that train no. 21 had authority to enter the North Godfrey siding. See id. at 80-81, 116-17. However, Petitioner could not recall whether the conductor had actually told him

that train no. 21 had the authority to go past the stop signal. See id. at 117, 119. Additionally, Petitioner conceded that he never received actual authority from the dispatcher to pass the stop signal. Id. at 116. Moreover, the conductor testified during the hearing that he did not specifically state to Petitioner that train no. 21 had the authority to proceed past the stop signal. See id. at 80-81. Because the testimony of Petitioner and the conductor lacks specificity, the Board does not find substantial evidence to support Petitioner's defense of an intervening cause.

In Petitioner's third assertion, he argues that if there was a misunderstanding as to the dispatcher's instructions relating to train no. 21's authority to proceed through the stop signal, there were minimal effects on rail safety because train no. 21 was moving at restricted speed and the dispatcher had provided train no. 21 with authority to enter the North Godfrey siding. He therefore concludes that Amtrak failed to consider the lack of safety implications under 49 C.F.R. § 240.307(i)(2). The Board finds that this assertion has no merit.

The regulation at 49 C.F.R. Part 240 provides a railroad with discretion to decide not to revoke a locomotive engineer's certification if it finds that the violation "was of a minimal nature and had no direct or potential effect on rail safety." 49 C.F.R. § 240.307(i)(2). However, the Board does not have the authority to overturn the railroad's decision for not exercising its discretion under that provision. See 64 Fed. Reg. 60966, 60982 (Nov. 8, 1999). As Amtrak has chosen not to exercise its discretion in this case, and the Board does not have the authority to order Amtrak to exercise its discretion, this petition cannot be granted on those grounds. Consequently, after considering Petitioner's actions and given the absence of evidence to the contrary, the Board finds substantial evidence to support Amtrak's decision to revoke Petitioner's Certification.

Conclusion

Based on the above findings and conclusions, the Board finds that the decision to revoke Petitioner's Certification as a locomotive engineer was proper and 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-2011-44

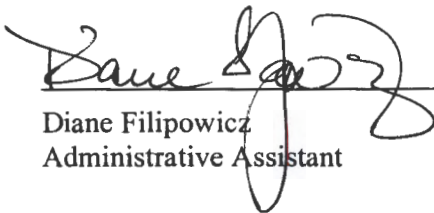
A copy of the Locomotive Engineer Review Board decision in this case has been sent by certified mail, return receipt requested, to each person shown below.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. S. P. Bradley
8755 South Kingston
Chicago, IL 60617

Mr. Dean H. Hansen
Western Region Chairman
Brotherhood of Locomotive Engineers and Trainmen
712 Raygene Way
North Salt Lake, UT 84054

Mr. Donald H. Savidge
Assistant System General Road Foreman
National Railroad Passenger Corporation
CNOC
15 S. Poplar Street
Wilmington, DE 19801



Diane Filipowicz
Administrative Assistant

MAY 02 2012

Date

enc: Post LERB Memo

cc: FRA Docket EQAL-2011-44

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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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1. Article Addressed to:

Mr. S. P. Bradley
8755 South Kingston
Chicago, IL 60617

EQAL 2011-44

2. Article Number

(Transfer from service label)

7011 0470 0002 3685 7515

PS Form 3811, February 2004

Domestic Return Receipt

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Mr. Dean H. Hansen
Western Region Chairman, BLE&T
712 Raygene Way
North Salt Lake, UT 84054

EQAL 2011-44

2. Article Number

(Transfer from service label)

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Mr. Donald H. Savidge
Assistant System General Road Foreman
National Railroad Passenger Corporation
CNOC
15 S. Poplar Street
Wilmington, DE 19801

EQAL 2011-44

2. Article Number

(Transfer from service label)

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