

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

Locomotive Engineer Review Board

Decision Concerning
The Terminal Railroad Association of St. Louis's
Revocation of Mr. E. Harold's
Locomotive Engineer Certification

FRA Docket Number EQAL 2011-45

Decision

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of the Terminal Railroad Association of St. Louis (TRRA) to revoke Mr. E. Harold'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 grants Mr. Harold's petition for the reasons set forth below.

Background

On August 2, 2011, Petitioner was serving as a locomotive engineer when his train operated past a dwarf signal that TRRA alleges was displaying a stop indication. TRRA revoked Petitioner's certification pursuant to 49 C.F.R. § 240.117(e)(1)(requiring a railroad to consider stop signal violations as a basis to revoke a locomotive engineer's certification).

On December 20, 2011, Petitioner filed a petition, requesting that FRA review TRRA's decision to revoke his certification. Petitioner asserted that the decision was improper because:

- (1) TRRA failed to render findings (separate from the disciplinary action) regarding the status of Petitioner's locomotive engineer certification within the time-frame specified in 49 C.F.R. § 240.307(c)(10).
- (2) TRRA's decision to revoke Petitioner's locomotive engineer certification was not supported by substantial evidence.
- (3) TRRA conducted Petitioner's formal hearing outside of the prescribed protocols of the collective bargaining agreement between TRRA and UTU.

Railroad's Response

Pursuant to 49 C.F.R. § 240.405(b) and (c), a copy of the petition was sent to TRRA, and TRRA was afforded an opportunity to comment. TRRA notified FRA that it would not respond to the petition.

Locomotive Engineer Review Board's Determination

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

- (1) On August 2, 2011, at approximately 3:57 p.m., Petitioner was operating the #103 Transfer, Industry, and Miscellaneous (TIM) assignment, with a crew consisting of Petitioner, a conductor and a switchman.

- (2) TRRA assigned the crew to deliver a train to the U.S. Steel Industry in Granite City, Illinois. As Petitioner departed Track 81 at the north end of the Madison Westbound Yard, Petitioner alleged he observed a Restricted Signal aspect displayed on the #68 Signal (Dwarf) and operated past the signal approximately 1 ½ engine lengths. After stopping, the crew saw a distant signal providing a permissive signal and assumed Signal #68 displayed an indication other than Stop. The train then proceeded an additional 8-10 car lengths before being stopped by the dispatcher.
- (3) On August 3, 2011, Petitioner received a notice of investigation, which also notified him that his certification was suspended pending the investigation. After several postponements, the investigation was held August 22, 2011. On August 26, 2011, Petitioner received a letter dismissing him from the company as a result of the outcome of the investigation. However, the letter made no findings as to Petitioner's certification. On October 20, 2011, Petitioner received a letter notifying him that his certification had been revoked.
- (4) In reviewing petitions related to railroads' revocation decisions, the Board considers four issues in determining whether decertification was proper under FRA's regulations. First, whether substantial evidence exists to support the railroad's factual findings in its decision. See 58 Fed. Reg. 18982, 19001 (April 9, 1993). Second, when considering procedural disputes, the Board will "determine whether substantial harm was caused the petitioner by virtue of the failure to adhere to the dictated procedures for making the railroad's decision. A finding of substantial harm is grounds for reversing the railroad's decision." Id. To establish grounds upon which the Board may grant relief, Petitioner must show: (1) that procedural error occurred, and (2) the procedural error caused substantial harm. Id. Third, whether the railroad's legal interpretations are correct based on a de novo review. Id. Finally, 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).
- (5) In this case, the Board concluded that TRRA's investigation of the incident resulting in the decertification decision was lacking in several respects. First, TRRA conducted field tests to ensure that the signal system was functioning as intended. However, the employee who conducted the testing indicated in his report that the sunlight was shining "into the face of the signal." See Employees' Exhibit B. He testified that this made it hard to see. (Tr. at p. 73).
- (6) In addition, the video from the camera in the locomotive cab was inconclusive as to the dwarf signal's indication (Tr. at p. 142). Further, Mr. Furlow, the Terminal Superintendent, Transportation and the charging officer in this matter, testified that he had viewed the dwarf signal from the ground about an hour to an hour and a half after the incident (Tr. at pp. 29-31). During his testimony, he showed a video of security camera footage, which showed the train as it operated through the signal, but did not show the signal aspect (Tr. at pp. 25-29). Mr. Furlow had also taken photographs of the signal that were provided in the record See Carrier Exhibit B. However, neither Mr. Furlow's visual perspective, nor the photographs, represented the view that Petitioner had from the locomotive at the time that he encountered the signal, and the videos were inconclusive.
- (7) As a result of these deficiencies in the investigation, TRRA did not rule out that the signal may have been compromised by reflecting sunlight or dirt, which would make the signal appear from the vantage point of Petitioner, to be displaying a different aspect. Therefore, the Board concludes that TRRA's decertification decision was not supported by substantial evidence.

- (8) Because of the Board's findings on the evidentiary issues in the case, the Board declines to address the procedural issues raised by Petitioner.

Conclusion

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 JUN 13 2012.



Richard M. McCord
Chairman,
Locomotive Engineer Review Board

SERVICE LIST EQAL 2011-45

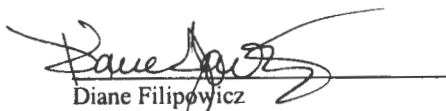
A copy of the Locomotive Engineer Review Board decision in this matter has been sent by certified mail and return receipt requested to each person shown below.

SENT CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Eric Harold
1742 College
East St. Louis, IL 62205

Mr. David Wier, Jr.
General Chairman
Labor Relations
United Transportation Union
260 Regency Centre
Collinsville, IL 62234

Mr. Todd E. Furlow
Superintendent
Terminal Railroad Association of St. Louis
1201 McKinley Avenue
Venice, IL 62090


Diane Filipowicz
Administrative Assistant

JUN 13 2012
Date

enc: Post LERB Memo

cc: FRA DOCKET EQAL 2011-45

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. Eric Harold
1742 College
East St. Louis, IL 62205

EQUAL 2011-45

2. Article Number

(Transfer from service label)

7011 0470 0002 1248 1352

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

 Agent Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

 Certified Mail Express Mail Registered Return Receipt for Merchandise Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

 Yes**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. David Wier, Jr.
General Chairman, Labor Relations
United Transportation Union
260 Regency Centre
Collinsville, IL 62234

EQUAL 2011-45

2. Article Number

(Transfer from service label)

7011 0470 0002 1248 1345

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

 Agent Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

 Certified Mail Express Mail Registered Return Receipt for Merchandise Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

 Yes**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. Todd E. Furlow
Superintendent
Terminal Railroad Association of St. Louis
1201 McKinley Avenue
Venice, IL 62090

EQUAL 2011-45

2. Article Number

(Transfer from service label)

7011 0470 0002 1248 1338

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

 Agent Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

 Certified Mail Express Mail Registered Return Receipt for Merchandise Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

 Yes