

**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. T. M. Kelley's  
Locomotive Engineer Certification

**FRA Docket Number EQAL 2011-46**

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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. T. M. Kelley'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 denies the petition for the reasons set forth below.

**Background**

On August 8, 2011, at approximately 2:53 p.m., while assigned to operate local freight train LB53-08, Petitioner allegedly failed to adhere to procedures for the safe use of train or engine brakes when those procedures are required for compliance with an initial terminal Class I air brake test on the Waco Subdivision near Milepost (MP) 878, Temple, Texas. See Pet. at 2-3; Tr. at 13.

UP charged Petitioner with a violation of 49 C.F.R. § 240.117(e)(3) – “failure to adhere to procedures for the safe use of train or engine brakes when the procedures are required for compliance with the initial terminal, intermediate terminal, or transfer train and yard test provisions.” An investigation and hearing was held on August 25, 2011, and UP notified Petitioner of the revocation of his certification by letter dated September 2, 2011. See Pet. Ex. B.

**Petitioner's Assertions**

The Brotherhood of Locomotive Engineers and Trainmen (BLET) filed a petition with FRA on behalf of Petitioner, requesting that the Board review UP's decision to revoke Petitioner's certification. The petition was received on December 20, 2011 and was timely filed. The petition asserts that the revocation was improper because:

- (1) Event recorder data entered at the hearing by UP as evidence does not match the geographical location of where the incident occurred (incorrect milepost information was entered into the locomotive event recorder download software).

“Absent the correct download information being available, it is difficult, if not impossible, to adequately resolve the testimonial conflict between the versions of events that were offered by the train crew and the testing managers involved in the instant case incident.” See Pet. at 3-4; Tr. at 97, 102.

- (2) Because the event recorder data is from the trailing locomotive (HLCX 3860), and not from the lead locomotive (UP 644) the data is not credible. See Pet. at 4, 8; Tr. at 40.
- (3) The testimony of the UP officials that witnessed the events is contradictory. See Pet. at 4, 8. Mr. Storbeck, Manager of Operating Practices (MOP), and Mr. Glenister, Manager of Terminal Operations (MTO), “testified [that] they believed that one of the required steps, a proper safety inspection of the cars, had been performed.” Pet. at 4. However, their testimony differed on whether a proper “set” and a proper inspection of the brake’s “release” had been performed. See Pet. at 4-6, 8.
- (4) Petitioner performed all tasks associated with a Class I air brake test for which an engineer is responsible. See Pet. at 7-8, Tr. at 194. Furthermore, the conductor testified that he complied with all rules concerning Class I air brake tests. See Pet. at 7.

#### **UP’s Response**

Pursuant to 49 C.F.R. § 240.405(b), (c), a copy of the petition was sent to UP on December 27, 2011, and the railroad was afforded an opportunity to comment. By letter dated February 17, 2012, UP responded to Petitioner’s assertions, as follows:

- (1) The milepost notation issue is resolved during the hearing (Tr. at 102), in which Mr. Storbeck explained that when printing the information he made a clerical error in entering the milepost location when the event recorder data was retrieved. When the correct notation was entered, this milepost discrepancy was eliminated and the data was true and accurate, having no bearing on the actual events that occurred in the field. See UP Resp. at 2.
- (2) The event recorder data was retrieved from the second unit in the train consist due to a technical issue with the lead locomotive that prevented retrieval of the event recorder on that unit. The issue with the lead locomotive’s recorder did not affect the data contained in the trailing unit’s recorder. Combined with the testimony of the UP employees, the data confirmed that the initial terminal air test was not properly conducted. See UP Resp. at 2.
- (3) The testimony is clear that the UP officials were describing the event as they recalled it. The testimony should not be identical, as the officials were at times viewing different events. Each officer testified (Tr. at 33, 49-50, 157-58) as to

what he believed the crew had executed in the air test. See UP Resp. at 2.

- (4) The release that the crew testified performing with respect to the Cobel cars was performed at Cobel (Tr. at 183, 193), which occurred *before* the initial terminal air test had begun, and thus does not meet the requirements of the test. See UP Resp. at 2. Tr. Ex. K details the proper procedure for an initial terminal air test, which requires the brakes to be released *after* the set. See UP Resp. at 3.

### **Board's Determinations**

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

- (1) On August 8, 2011, at approximately 2:53 p.m., while assigned to operate local freight train LB53-08, after adding fifteen rail cars of a scheduled pickup from an industry, Petitioner failed to adhere to procedures for the safe use of train or engine brakes when those procedures are required for compliance with a Class I air brake test on the Waco Subdivision near MP 878, Temple, Texas. See Pet. at 2-4; Tr. at 13.
- (2) The train crew consisted of Petitioner and a conductor. The crew initially left cars on the siding at City Pass and then entered the customer facility at Cobel where fifteen cars were picked up and the end-of-train device was attached to the rear of the cut of cars. The crew shoved the fifteen-car cut to the main track and left this cut in position on the main track to provide access to the cars at City Pass. This left the fifteen cars from Cobel as the rear of the train. See UP Resp. at 1. The crew then pulled the cars from City Pass, adding them to the head-end of the cut from Cobel. The crew then began the required initial terminal air brake test. See UP Resp. at 1; Tr. at 101, 145-48.
- (3) UP officials were in the area testing for rule compliance by observing radio communications, the train's movements, and the crew's actions. See Tr. at 31, 104-05.
- (4) Mr. Storbeck, the MOP, testified that he saw "the conductor walk toward the head end of the locomotives . . . he was walking his set on his air test," which is one of the requirements of the Class I air brake test. Tr. at 33. Mr. Storbeck testified that "the release was not checked for this air test." Tr. at 35.
- (5) A download of the trailing locomotive's (HLCX 3860) event recorder was obtained. Data could not be obtained from the leading locomotive (UP 644), due to technical difficulties in downloading the recorder to the manager's laptop computer. See Tr. at 114-15.

## **Analysis of the Petition**

Petitioner's first assertion involves a substantive factual issue. Petitioner argues that the event recorder data entered at the hearing by UP as evidence does not match the geographical location of where the incident occurred, and without the correct download information, it is difficult to resolve the testimonial conflict between the version of events of the train crew and that of the testing managers. See Pet. at 3-4. "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. 18,982, 19,001 (Apr. 9, 1993).

The Board finds that Petitioner's first assertion lacks merit. It was determined at the hearing that the incorrect milepost locations were erroneously entered into the locomotive data software as a result of a clerical error, and this error was subsequently corrected. See Tr. at 97, 102; UP Resp. at 2. Although UP failed to have the evidence reprinted indicating this correction, the clerical error had no bearing on the actual events that occurred in the field. The event recorder data does indicate that the time of the event coincides with the testimony. The application and release of the air brake data is the critical information from the recorder, as it validates the engineer's compliance with the "set" and "release" of the air brakes.

Petitioner's second assertion also involves a substantive factual issue. Petitioner argues that because the event recorder data is from the trailing locomotive (HCLX 3860), rather than the leading locomotive, the data is not credible. See Pet. at 4, 8; Tr. at 41-42.

The Board finds that Petitioner's second assertion also lacks merit. The data was retrieved from the second unit because there was a technical issue with the lead locomotive that prevented the event recorder from downloading to the manager's laptop computer. See Tr. at 40; UP Resp. at 2. The issue with the lead locomotive did not affect the validity of the data contained on the recorder of the trailing unit, HCLX 3860. Additionally, HCLX 3860 was the controlling unit when the train operated southward. See Tr. at 40. The data matches the time of the event and there is nothing to indicate that this data was inaccurate.

Petitioner's third assertion involves a substantive factual issue. Petitioner argues that the testimony of the UP officials that witnessed the events is contradictory. See Pet. at 4, 8.

The Board finds that Petitioner's third assertion lacks merit. Each official provided testimony of what he witnessed, and each official observed different functions of the crew. In fact, it would be questionable if the testimony was identical. Mr. Storbeck testified that there was definitely a "set," but the "release" was in question. See Tr. at 131-32. Mr. Glenister stated that he did not observe the conductor "walking a set." See Tr. at 159.

Petitioner's final assertion involves a substantive factual issue. Petitioner argues that the crew complied with all rules concerning Class I air brake tests. See Pet. at 7-8.

The Board finds that Petitioner's final assertion lacks merit, as proper procedures for a Class 1 air brake test were not followed. A Class I air brake test must be performed when adding or

removing a solid block of cars and/or when cars that have not been charged on air for over four hours are introduced into a train's consist. See Tr. at 72, 77, 79-80; Tr. Ex. J; 49 C.F.R. § 232.205(a). A Class I brake test was required here because the crew added a solid block of cars that had been off of air for more than four hours (approximately 2 days). See Tr. at 71, 81.

A proper Class I brake test includes a visual walk-around safety inspection by the conductor of the cars introduced into the train, a visual observation by the conductor that 100% of the brakes apply on each of those cars when the engineer initiates a brake application, and a visual confirmation by the conductor that each air brake releases when the brake valve is placed in the release position by the engineer. See Pet. at 4; Tr. Ex. K. Federal regulations require that "[w]hen the release is initiated by the controlling locomotive or yard test device, the brakes on each freight car shall be inspected to verify that it did release; this may be performed by a "roll-by" inspection. If a "roll-by" inspection of the brake release is performed, train speed shall not exceed 10 MPH and the qualified person performing the "roll-by" inspection shall communicate the results of the inspection to the operator of the train. The operator of the train shall note successful completion of the release portion of the inspection on the record required in paragraph (d) of this section." 49 C.F.R. § 232.205(c)(8).

The evidence shows that the crew performed a release as they pulled out of Cobel, and performed a set on the main track *after* the release. Performing the release before the set constitutes an improper brake test, as federal regulations and UP rules require that the crew perform a set and then a release. See Tr. at 82-85; Tr. Ex. K; UP Resp. at 3; 49 C.F.R. § 232.205(c). There must be communication between the engineer and the conductor during a brake test to ensure that the brake test is properly performed. In this case, Petitioner's testimony indicates a lack of understanding about where the conductor made the release. See Tr. at 137, 193. An engineer must know where the conductor made the release in order to ensure that a proper test is performed.

### Conclusion

Based on its review of the record and the above findings, the Board hereby denies the petition in accordance with the provisions of 49 C.F.R. Part 240.

Issued in Chicago, IL on APR 13 2012.



Richard M. McCord  
Chairman,  
Locomotive Engineer Review Board

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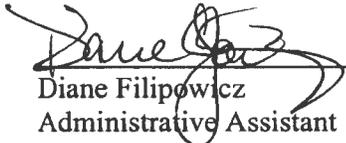
A copy of the Locomotive Engineer Review Board decision in this matter has been sent by certified mail and return receipt requested to each person shown below.

SENT CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. T. M. Kelley  
P.O. Box 428  
Hubbard, TX 76648-0428

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

Ms. Rebecca Hernandez  
Manager, Engineering Certification & Licensing  
Union Pacific Railroad Company  
1400 Douglas Street, Mailstop 1010  
Omaha, NE 68179

  
Diane Filipowicz  
Administrative Assistant

APR 13 2012  
Date

enc: Post LERB Memo

cc: FRA DOCKET EQAL 2011-46

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Mr. T. M. Kelley  
 P.O. Box 428  
 Hubbard, TX 76648-0428

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1. Article Addressed to:

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

*EQUAL 2011-46*

2. Article Number

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1. Article Addressed to:

Ms. Rebecca Hernandez  
 Manager, Engineering Certification & Licensing  
 Union Pacific Railroad Company  
 1400 Douglas Street, Mailstop 1010  
 Omaha, NE 68179

*EQUAL 2011-46*

2. Article Number

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3. Service Type

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4. Restricted Delivery? (Extra Fee)

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