

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

Locomotive Engineer Review Board

Review and Determinations Concerning  
Alaska Railroad Corporation's  
Decision to Revoke Mr. T. T. Gladle's  
Locomotive Engineer Certification

**FRA Docket No. EQAL 2011-50**

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**Decision**

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of the Alaska Railroad Corporation (ARR) to revoke Mr. T. T. Gladle'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 has determined that ARR's decision to revoke Petitioner's certification was not proper under 49 C.F.R. Part 240, and therefore grants the petition for the reasons set forth below.

**Background**

On August 13, 2011, at approximately 11:13 a.m., Petitioner was performing duty as the fireman on ARR train 239<sup>1</sup> at Talkeetna, Alaska. Petitioner allegedly released main track authority governing the Direct Train Control<sup>2</sup> (DTC) block that his train was occupying while it stood stationary at the Talkeetna Depot. Petitioner was later removed from service.

Petitioner's certification was suspended on August 13, 2011, for occupying main track without authority in violation of 49 C.F.R. § 240.117(e)(4).<sup>3</sup> A Federal certification hearing was held by ARR on September 1, 2011. On September 13, 2011, Petitioner was notified that his certification had been revoked. Petitioner timely filed a petition dated January 3, 2012, requesting FRA review of ARR's decision. The petition asserted that the revocation was improper for several reasons. As in this instance only one assertion is relevant, the Board need only address Petitioner's assertion that:

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<sup>1</sup> The record alternately refers to Petitioner's train as the "230N" and the "239". For the purposes of this proceeding, the Board will refer to it as train 239.

<sup>2</sup> DTC is also commonly referred to as Direct Traffic Control.

<sup>3</sup> The record indicates the ARR mistakenly cited 49 C.F.R. § 240.305(a)(4) in suspending, and later revoking, Petitioner's certification for allegedly occupying main track without authority.

Petitioner was called to perform the duties of the fireman on the train crew, and not the locomotive engineer. 49 CFR 240.117(c)(3) states that a railroad shall not revoke a certification when a certified locomotive engineer is called to perform the duty of a train crew member other than that of locomotive engineer.

Pursuant to 49 C.F.R. §§ 240.405(b) and (c), a copy of the petition was sent to ARR on January 5, 2012, and ARR was afforded an opportunity to comment. ARR did not timely respond to the petition, but provided a late response which the Board was not able to consider prior to making its determination. Federal Express records indicate that on January 10, 2012, ARR signed for the petition sent by FRA. Section 240.405(c) permits a railroad 60-days from receipt of the petition to respond. ARR's response letter was both dated and postmarked March 13, 2012, or 63 days after ARR received the petition.

### **Board's Determinations**

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

- 1) On August 13, 2011, Petitioner was performing duty as the fireman on ARR train 239. See Petition; Transcript at 8, 31.
- 2) The crew of Petitioner's train was issued a mandatory directive at 10:26 a.m., giving the train authority to occupy 13 DTC blocks between the Deception and Billion blocks. See Petition; Transcript at 7-10, 49-52. The Twister block is located within the limits between Deception and Billion. Id.
- 3) At 11:13 a.m., the dispatcher contacted the train's crew and requested a partial release of the train's mandatory directive block authority. Id. At that time, the train was standing stationary at Talkeetna Depot in the Twister block. Id.
- 4) Petitioner tried to raise the train's conductor on the radio to release the blocks from the train's authority. Id. Petitioner was unable to raise the conductor, and then released authority via radio to the dispatcher at 11:14 a.m. Id.
- 5) Petitioner released authority from blocks Deception through Twister, which was the block that the train was actually occupying. Id.
- 6) The train's brakeman relayed to the conductor that Petitioner had released the train's authority. With the train still standing stationary at Talkeetna Depot, at 11:17 a.m., the train's conductor then contacted the dispatcher via telephone and confirmed which blocks had been released and alerted the crew to copy new mandatory directive authority. Id.
- 7) At 11:19 a.m., a new authority was issued for the crew to occupy the Twister block. Id.
- 8) Petitioner's certification was suspended for occupying main track without authority in violation of 49 C.F.R. § 240.117(e)(4).

9) A Federal certification hearing was held on September 1, 2012. Petitioner was notified his certification was revoked on September 13, 2012.

10) Petitioner timely filed a petition appealing ARR's revocation decision, asserting the above argument.

### Analysis

The record establishes that Petitioner was called as the fireman of his train rather than as the locomotive engineer. Transcript at 8, 31. Petitioner was not actually operating the train, and the record does not indicate that he was performing locomotive engineer duties at the time of the alleged violation (per the Federal regulatory definition of the term "locomotive engineer" at 49 C.F.R. § 240.7). *Id.* Further, the record does not indicate that Petitioner was acting as an engineer pilot, a designated supervisor of locomotive engineers, or an instructor engineer, such that he could be held responsible under § 240.117(c)(2) for the alleged violation. *Id.* Further, it was Petitioner's radio conversation with the dispatcher led to the alleged violation in this instance. As acknowledged by ARR during Petitioner's decertification hearing, the assigned locomotive engineer of a train is not permitted via ARR's rules to release authority while operating the controls of a locomotive. Transcript at 10. Section 240.117(c)(3) does not permit a railroad to revoke a locomotive engineer's certification when that engineer "is called by a railroad to perform the duty of a train crew member other than that of locomotive engineer . . . based on actions taken or not taken while performing that duty." Thus, Petitioner's certification should not have been revoked. ARR asserted during the hearing that the General Code of Operating Rules (GCOR) definition of the term "engineer" includes firemen. Transcript at 12. The GCOR definition of an engineer has no applicability for certification purposes with regard to the Federal regulatory definition of the term "locomotive engineer" at § 240.7.

### Conclusion

Based on the above determinations, the petition is granted in accordance with the provisions of Title 49, Part 240 of the Code of Federal Regulations.

MAY 02 2012

Issued in Chicago, IL on \_\_\_\_\_.



Richard M. McCord  
Chairman,  
Locomotive Engineer Review Board

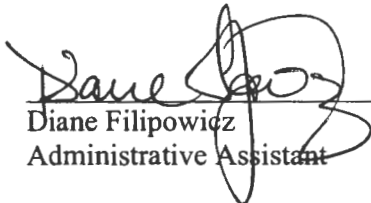
**SERVICE LIST EQAL 2011-50**

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

Mr. T. T. Gladle  
18930 Citation Road  
Eagle River, AK 99577-8340

Mr. Brett Brown  
UTU Local 1626  
570 Derbyshire Drive  
Fairbanks, AK 99709

Ms. C. Ann Courtney  
Deputy General Counsel  
Alaska Railroad Corporation  
P.O. Box 107500  
Anchorage, AK 99510-7500

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

**MAY 02 2012**  
\_\_\_\_\_  
Date

cc: FRA Docket EQAL 2011-50

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