

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

Locomotive Engineer Review Board

Decision Concerning  
Burlington Northern Santa Fe Railway Company's  
Revocation of Mr. M. J. Nason's  
Locomotive Engineer Certification

**FRA Docket Number EQAL 2012-04**

---

**Decision**

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of the Burlington Northern Santa Fe Railway Company (BNSF) to revoke Mr. M. J. Nason'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 Mr. Nason's petition for the reasons set forth below.

**Background**

On November 3, 2011, at approximately 1445 hours, Petitioner allegedly operated BNSF train Y-DYT1811-03T past a signal requiring a complete stop at CPLF 353. By Notification of Certificate Suspension signed by Petitioner and containing a date of November 3, 2011, BNSF notified Petitioner that his certification was suspended pending a hearing investigating the incident. The Notification stated that Petitioner was entitled to a formal hearing in compliance with 49 C.F.R. § 240.307 and that Petitioner could waive his right to the hearing. By Notification of Certificate Revocation, containing a date of November 3, 2011, Petitioner signed a waiver of his right to a formal hearing under 49 C.F.R. § 240.307. This Notification indicated that the revocation period for violation of railroad operating rules implementing 49 C.F.R. § 240.117(e)(1), prohibiting operation of a train not in accordance with a signal requiring a complete stop before passing it, would begin on November 3, 2011.

A petition was timely filed with FRA by mail on January 17, 2012 by the Brotherhood of Locomotive Engineers and Trainmen on behalf of Petitioner, requesting that FRA review BNSF's decision to revoke his certification. The petition asserts that the revocation was improper because:

- (1) Petitioner's view of the signal aspect was distorted by the sun, impairing his ability to comply with the operating rule;
- (2) BNSF did not conduct a fair and impartial investigation because it did not conduct a reenactment of the incident or retrieve the video downloads from the

lead locomotive which would have proven that the signal aspect was distorted;  
and

- (3) The BNSF officer who conducted the hearing was not fair and impartial because he prejudged the Petitioner.

Pursuant to 49 C.F.R. § 240.405(b), (c), a copy of the petition was sent to BNSF. The railroad elected to comment and was required by 49 C.F.R. § 240.405(d)(2) to provide Petitioner with a copy of the materials submitted to FRA.

### **BNSF's Response**

BNSF responded (BNSF Response) to Petitioner's assertions by arguing that:

- (1) Petitioner voluntarily surrendered his rights under 49 C.F.R. Part 240 by signing the waiver;
- (2) Petitioner's assertion that the sun distorted the signal aspect is without merit because the signal logs show that the signal was red at the time of the incident, the crew did not report the alleged yellow signal to the dispatcher, and the crew did not communicate regarding the signal aspect until after they had passed the signal;
- (3) There was no need to conduct a reenactment or retrieve the video downloads based on the evidence collected both before and during the hearing; and
- (4) There is no evidence of unfairness or impartiality by the BNSF officer who conducted the hearing.

### **Locomotive Engineer Review Board's Determination**

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

- (1) On November 3, 2011, at approximately 1445 hours, Petitioner operated BNSF train Y-DYT1811-03T the U.P. Lafayette Subdivision. Petition at 1; BNSF Response at 3.
- (2) Petitioner received a diverging approach signal aspect at CPLF 355. Id.
- (3) The next signal at CPLF 353 was red and required a complete stop before passing the signal. Id.
- (4) Petitioner operated the train past signal at CPLF 353 without coming to a complete stop. Id.

- (5) By Notification of Certificate Suspension signed by Petitioner and containing a date of November 3, 2011, BNSF notified Petitioner that his certification was suspended pending a hearing investigating the incident. The Notification stated that Petitioner was entitled to a formal hearing in compliance with 49 C.F.R. § 240.307 and that Petitioner could waive his right to the hearing. BNSF Response Ex. A.
- (6) Petitioner signed a waiver of his right to a formal hearing under 49 CFR Part 240.307, and accepted revocation of his certification.

**Analysis of the Petition**

In order for a waiver of a revocation of certification to be valid, the waiver must: (1) be made in writing; (2) reflect the fact that the person has knowledge and understanding of these rights and voluntarily surrenders them; and (3) be signed by the person making the waiver. 49 C.F.R. § 240.307(f).

Although Petitioner presents arguments relating to the underlying violation, the Board cannot hear these arguments if it finds that the waiver document is valid. The Notice of Certificate Revocation, signed by Petitioner on May 8, 2011, demonstrates that Petitioner was properly informed of his rights under 49 C.F.R. Part 240 and that he in fact waived his right to an on-the-property hearing for the purposes of certificate revocation.

The document states: "Sign at the end of this paragraph if you accept certificate revocation and waive your right to a formal hearing under 49 CFR Part 240.307. By doing so, you indicate that you have knowledge and understanding of all your rights under 49 CFR Part 240 and voluntarily surrender them." BNSF Response Ex. B. This paragraph is immediately followed by Petitioner's signature. The document also indicates that Petitioner's certification was to be revoked beginning on November 3, 2011. Accordingly, the Board finds that the language contained in the waiver signed by Petitioner was sufficient to the extent that Petitioner should have reasonably been expected to have knowledge and understanding of his rights and voluntarily surrendered them on the date that he signed the waiver document. Thus, the Board finds that the waiver met the requirements set forth in 49 CFR § 240.307(f).

The petition must therefore be denied in accordance with the provisions of 49 C.F.R. Part 240.

Issued in Chicago, IL on MAY 24 2012.



Richard M. McCord  
Chairman,  
Locomotive Engineer Review Board

**SERVICE LIST EQAL 2012-04**

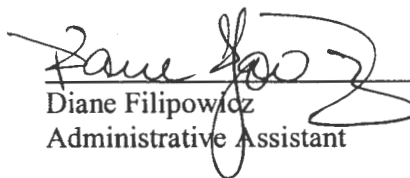
A copy of the Locomotive Engineer Review Board decision in this matter has been sent by certified mail and return receipt requested to each person shown below.

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

Mr. M. J. Nason  
403 Dianeshire Ct.  
Spring, TX 77388

Mr. Jack Sweeny  
Local Chairman Division 776  
Brotherhood of Locomotive Engineers and Trainmen  
P.O. Box 1169  
Brazoria, TX 77422-1169

Ms. Kathy R. Conkling  
Manager, Certificate Administration  
Burlington Northern Santa Fe Railway Company  
12345 College Park Boulevard  
Overland Park, KS 66210-1299

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

**MAY 24 2012**

\_\_\_\_\_  
Date

enc: Post LERB Memo

cc: FRA DOCKET EQAL 2012-4

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	A. Signature <span style="float: right;"><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</span> <b>X</b>	
1. Article Addressed to:  <p style="text-align: center;">Mr. M. J. Nason 403 Dianeshire Ct. Spring, TX 77388</p>	B. Received by (Printed Name)	C. Date of Delivery
	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
2. Article Number (Transfer from service label)	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
<p style="text-align: center;"><b>EQAL 2012-04</b></p>		
2. Article Number <u>7011 0470 0002 3685 8574</u> (Transfer from service label)		
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540		

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	A. Signature <span style="float: right;"><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</span> <b>X</b>	
1. Article Addressed to:  <p style="text-align: center;">Mr. Jack Sweeny Local Chairman Division 776, BLE&amp;T P.O. Box 1169 Brazoria, TX 77422-1169</p>	B. Received by (Printed Name)	C. Date of Delivery
	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
2. Article Number (Transfer from service label)	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
<p style="text-align: center;"><b>EQAL 2012-04</b></p>		
2. Article Number <u>7011 0470 0002 3685 8550</u> (Transfer from service label)		
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540		

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	A. Signature <span style="float: right;"><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</span> <b>X</b>	
1. Article Addressed to:  <p style="text-align: center;">Ms. Kathy R. Conkling Manager, Certificate Administration Burlington Northern Santa Fe Railway Company 12345 College Park Boulevard Overland Park, KS 66210-1299</p>	B. Received by (Printed Name)	C. Date of Delivery
	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
2. Article Number (Transfer from service label)	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
<p style="text-align: center;"><b>EQAL 2012-04</b></p>		
2. Article Number <u>7011 0470 0002 3685 8543</u> (Transfer from service label)		
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540		