

PARTIES TO DISPUTE: BROTHERHOOD OF LOCOMOTIVE ENGINEERS

-AND-

NATIONAL CARRIERS' CONFERENCE COMMITTEE

BACKGROUND

As a result of the Rail Safety Improvement Act of 1988, 49 U.S.C. section 20101 et seq., railroads subject to this law are required to certify the qualifications of locomotive engineers whom they employ. The locomotive engineers' certification must be renewed every 36 months. Effective September 17, 1991, the United States Department of Transportation Federal Railroad Administration (hereinafter referred to as the FRA) issued a Code of Federal Regulations (CFR) regarding the qualifications and certification of locomotive engineers. The purpose of these Regulations is to ensure that only qualified persons operate a locomotive or train. Among other things, the FRA Regulations require railroads to enact a program to monitor the operational performance of its certified locomotive engineers.

Section 240.305 of the FRA Regulations makes it unlawful for a locomotive engineer to:

(1) Operate a locomotive or train at a speed that exceeds the maximum authorized limit by a least 10 miles per hour or by more than one half of the authorized speed, whichever is less;

(2) Operate a locomotive or train past any signal, without completely stopping the locomotive or train, when that signal

requires a complete stop before passing it; or

(3) Fail to comply with any mandatory directive concerning the movement of a locomotive or train by occupying a segment of main track without authority.

If a railroad acquires information which convinces it that a locomotive engineer no longer meets the qualification requirements of the Rail Safety Improvement Act it is required to immediately suspend an engineer's certification pending a hearing. If the railroad determines, on the record of the hearing, that a locomotive engineer no longer meets the statutory qualification requirements for certification it must revoke the engineers's certification.

The locomotive engineer has the right to petition the FRA to review the railroad's decision. The initial responsibility for adjudicating such disputes has been delegated to the Locomotive Engineer Review Board. The locomotive engineer or the railroad involved in the dispute over revocation of certification has a right to an administrative hearing if either is adversely affected by the decision of the Locomotive Engineer Review Board.

The FRA requires railroads to revoke an engineer's certification if a certified engineer has demonstrated a failure to comply with railroad rules and practices for the safe operation of trains. Under CFR 240.117 (e) a railroad shall consider violations of its operating rules and practices that involve the following infractions:

(1) Failure to control a locomotive or train in accordance with a signal indication that requires a complete stop before passing it;

(2) Failure to adhere to limitations concerning train speed when the speed at which the train was operated exceeds the maximum authorized limit by at least 10 miles per hour or by more than one half of the authorized speed, whichever is less;

(3) Failure to adhere to procedures for the safe use of train or engine brakes when the procedures are required for compliance with the transfer, initial, or intermediate terminal test provisions of 49 CFR part 232;

(4) Occupying main track without proper authority;

(5) Failure to comply with prohibitions against tampering with locomotive mounted safety devices; and

Under the FRA Regulations, in the case of a single incident involving violation of one or more of the aforementioned operating rules or practices, an engineer shall have his/her certification revoked for thirty (30) days. A second infraction within three years of the first infraction results in revocation of an engineer's certification for one year. And more than two such violations in a period of five years results in revocation of certification for a period of five years.

On May 31, 1996, Carriers represented by the National Carriers' Conference Committee reached an agreement with the Brotherhood of Locomotive Engineers that resolved all outstanding

collective bargaining agreement was retroactive to December 1, 1995 and is in effect through December 31, 1999.

On May 31, 1996, the Carriers represented by the National Carriers' Conference Committee and the Brotherhood of Locomotive Engineers agreed to submit the following questions to a three-member Arbitration Board:

In light of the agreement attached and all other relevant circumstances, should locomotive engineers receive any certification pay? If so, how much?

It was further agreed that either party was free to make whatever arguments it wishes regarding the propriety or lack thereof of offsetting any certification pay by means of granting rules relief to the Carriers. The parties also agreed that the jurisdiction of the Arbitration Board to address the merits of such arguments would not be challenged.

The parties selected Robert O. Harris, Robert M. O'Brien and Eckehard Muessig to serve on the Arbitration Board established pursuant to their May 31, 1996 letter of understanding. The Arbitrators appointed Robert O. Harris to serve as Chairman of the Arbitration Board. The parties filed pre-hearing briefs with the Arbitration Board on December 11, 1996. Hearings were held in Washington D.C. on December 17, 18 and 19, 1996. The parties filed post-hearing briefs on January 31, 1997. The Arbitration Board met in executive session on February 24 and March 5, 1997.

POSITION OF THE PARTIES

The Brotherhood of Locomotive Engineers contends that a fair and equitable certification allowance would be \$15 per trip and 15 cents per overmile for locomotive engineers operating in freight service; and \$15 per trip for locomotive engineers working in yard service. The Brotherhood of Locomotive Engineers further argues that this certification allowance should not be offset by the work rule relief sought by the Carriers before this Arbitration Board since there is no justification for such offsets.

The Brotherhood of Locomotive Engineers maintains that the precise question of whether locomotive engineers are entitled to a certification allowance has been the subject of three recent Presidential Emergency Boards and, in each instance, those Boards concluded that engineers are entitled to a certification allowance now that certification has become mandatory pursuant to the Rail Safety Improvement Act of 1988. Moreover, the Brotherhood of Locomotive Engineers contends that four (4) recent collective bargaining agreements it negotiated on behalf of approximately 6,000 engineers provided for a certification allowance.

The Carriers argue that FRA certification of engineers does not warrant any extra pay since it did not cause any substantial change in their qualifications, responsibilities or working conditions. Should the Arbitration Board find that locomotive

engineers are entitled to a certification allowance the Carriers maintain that such an allowance should be small and should terminate on December 31, 1999, so as not to prejudice the more comprehensive work of the National Wage and Rules Panel established pursuant to the collective bargaining agreement reached with the Brotherhood of Locomotive Engineers on May 31, 1996.

Lastly, the Carriers propose that any certification pay granted engineers should be offset by eliminating some or all of the following arbitrables and penalties:

- switching allowances
- initial terminal delay
- final terminal delay
- terminal runaround penalties

This Arbitration Board has carefully and thoroughly considered the evidence and arguments submitted to us by the Brotherhood of Locomotive Engineers and the National Carriers' Conference Committee. Based on that extensive record we award as follows.

AWARD

Because the Rail Safety Improvement Act of 1988 imposed additional responsibility on locomotive engineers this Arbitration Board finds that for each calendar day worked certified engineers in yard and/or road service shall receive an allowance of \$5.00

This certification allowance shall not be offset by any charges in switching allowances, initial terminal delay, final terminal delay or terminal runaround penalties.

This certification allowance shall remain in effect until a successor collective bargaining agreement is negotiated to the May 31, 1996 collective bargaining agreement or until the parties mutually agree to do otherwise.



Robert O. Harris, Arbitrator



Robert M. O'Brien, Arbitrator



Richard Muessig, Arbitrator

Dated: March 12, 1997