

February 15, 1998

Docket Clerk
Federal Railroad Administration
1120 Vermont Ave NW
Washington, D. C. 20590

Appeal must be addressed to this address in order to be valid.

Dear Sir:

Please accept this petition for review per 49 CRF, Part 240, Subpart E - Dispute Resolution Procedures, 240.401 and 240.403.

Petitioner

Roger Lee Martin
1102 NW 600
Holden, MO 64040
Phone (504) 737-0784

You must use petitioner's full name (no initials) and you must have the home address as well as a daytime phone number.

Railroad

Union Pacific Railroad
1416 Dodge Street
Omaha, NE 68179

You must list the address of the railroad responsible for the decertification.

This petition is being filed on behalf of Petitioner by:

Gil Gore, Chairman Local Committee of Adjustment
Division 193 Brotherhood of Locomotive
Engineers
4016 Paige Janette
Harvey, LA 70058
(504) 348-3226

You must list the address and the phone number of the person filing the petition if not the petitioner.

The contact person for the Union Pacific Railroad is:

R. L. Pugmire, Director of Operating Practices
Union Pacific Railroad
4600 South Redwood Road
Salt Lake City, UT 84123

You must list the address of the contact person for the railroad. (Address is correct effective 02/28/01)

It is the Petitioner's belief that the Railroad acted improperly when it suspended and subsequently revoked his certification and further that the UP Railroad's citations were in violation of 49 CFR - Part 240 and the applicable collective bargaining agreement as it pertains to discipline and investigations.

You must use the above language stating that the RR acted improperly by issuing the decertification

You must list all supporting documents that are filed in conjunction with the petition. The transcript of the hearing and all other letters and information that support your cause.

The following supporting documents are attached hereto and made a part of this petition:

Exhibit A Letter from Union Pacific Superintendent Mark Costanzo issuing the discipline and decertification to Petitioner Martin dated August 28, 1997 received by Petitioner and the Brotherhood of Locomotive Engineers on September 8, 1997.

Exhibit B Transcript of the hearing conducted on August 18, 1997 by Union Pacific in which Petitioner Martin was charged with allegedly passing a stop indication in violation of the rules.

Exhibit C Federal Railroad Administration Department of Transportation Regulations Part 240.229 Requirements of joint operations territory. Federal Railroad Administration Department of Transportation Regulations Part 240.307 Revocation of certification.

You must include a statement of facts that outline what happened during the incident. This should include date, time, location, crew members, and a complete description of the incident.

On July 16, 1997 Petitioner R. L. Martin was working as Locomotive Engineer on job SP 802. Petitioner Martin was down in the New Orleans area borrowed out from his home territory in Kansas City, Missouri. This was Petitioner's third or fourth trip over this

territory. Engineer Martin and his crew had just delivered a train from the SP Yard at Avondale, Louisiana to CSX's Gentilly Yard and they were returning to Avondale with light power consisting of two units, SP 8558 and SP 7371. Prior to departing Gentilly Yard, Petitioner contacted the CSX Yardmaster as per the rule requirements inquiring as to which track he should depart the yard on. Claimant was told by the Yardmaster to depart Gentilly in accordance with the signal indication he received at the Industrial Canal Draw Bridge. Petitioner Martin departed Gentilly on a restricted signal and proceeded in a southward direction until he encountered a red signal at NE Tower. At approximately 0630 hours Engineer Martin's Conductor communicated with Northfork Southern Oliver Tower informing them that they were stopped on the CSX southbound main at a red signal at NE Tower. NE Tower is a manual interlocking that is controlled by the NS Operator in Birmingham, Alabama. (This interlocking controls the intersection of 2 mainlines on the NS and 2 mainlines on the CSX with a maximum of 10 car lengths separating the northbound and southbound signals. The tracks on either side of the CSX mainlines requires movement at restricted speed under the authority of the CSX Yardmaster at Gentilly.) Oliver Tower contacted the NS Operator at Birmingham and instructions were issued to Claimant's Conductor authorizing him to proceed past the signal at NE Tower on the CSX southbound track to St. Roch. Petitioner Martin and his crew then proceeded by the red signal to St. Roch. Upon arrival there, Claimant and his Conductor contacted NS Oliver Tower because the signal at St. Roch was red, while the signal on the other CSX mainline next to them was indicating proceed. Petitioner was informed by NS Oliver Tower to stay there and he would be met by someone from the NS Railroad.

A hearing was conducted on August 18, 1997 and Petitioner Martin was notified of his decertification in a letter from Superintendent Costanzo dated August 28, 1997.

You must include an explanation of why the railroad was in error in revoking petitioner's certificate. This is where you should outline your case and make all relevant points in favor of a sustaining decision.

After reviewing the entire record in this matter, Petitioner Martin believes the Locomotive Engineer Review Board will agree that Union Pacific Railroad was in error in suspending and revoking his certificate because of the following facts:

- FACT 1:** The hearing was not conducted in a fair and impartial manner. Information was properly requested according to the Discipline Agreement between the parties, but was not produced prior to the hearing for examination and proper

discovery. (See Local Chairman Gore's opening remarks and objections page 15 through 18 of Exhibit B.)

- FACT 2:** The hearing was not conducted in a fair and impartial manner due to the fact that the Carrier failed to produce all essential witnesses requested at the hearing.
- FACT 3:** The CSX, Southern and Union Pacific Railroads failed to properly qualify Locomotive Engineers as provided for in Part 240.229 governing joint operations with other railroads.
- FACT 4:** Union Pacific failed to properly qualify R. L. Martin as a Engineer under Part 240.223. (Union Pacific was cited by local FRA Inspectors with 11 counts of violations regarding this incident on November 3, 1997)
- FACT 5:** Neither Petitioner nor any other Engineers have been issued any rules instructions on the CSX railroad over the territory involved in the instant case. (The CSX is not governed under the General Code that Union Pacific uses. See page 118 lines 8-18 of Exhibit B. See also testimony on page 124 lines 29-38 and page 125 lines 1-12 Exhibit B.)
- FACT 6:** Neither Petitioner nor any other Engineers have been provided with timetables covering the section of track in question in the instant case. (See Page 152 Exhibit B lines 28-38 and Page 153 lines 1-14)
- FACT 7:** Petitioners immediate supervisor, MOP Tom Perry, in the hearing regarding this incident improperly identified the two CSX mainlines involved in the instant case. On page 115 lines 22-28 and later on page 128 lines 5-32 of Exhibit B he incorrectly identified the subdivision as an East / West subdivision when in fact it is North / South subdivision according to the CST Timetable No. 1 in effect as of May 1, 1997 Exhibit B page 209. The direction of movement is clearly shown to be South from Sibert Yard in Alabama to New Orleans.
- FACT 8:** MOP Tom Perry improperly identified the No. 2 track as the No. 1 track. (See testimony on page 148 lines 4-16 Exhibit B.)

FACT 9: The yardmaster at the CSX (who was the original initiator of the move) was himself confused as to which track Petitioner left Gentilly Yard on. (See page 146 lines 22-31 Exhibit B.)

FACT 10: Every Railroad involved in this incident bears responsibility for it happening. There was a miscommunication between the CSX Yardmaster at Gentilly, the NS Yardmaster at Oliver Tower, the NS Birmingham Operator and Petitioner and his crew. Petitioner and his crew were the only eyewitnesses produced at the hearing by any of the involved Railroads. Union Pacific is trying to ignore their responsibilities regarding this incident and by virtue of the kangaroo court process, make sure Petitioner Martin solely pays for their shortcomings and failures.

FACT 11: Petitioner and his crew were in fact improperly drug tested over the hours of service in violation of Federal Regulations.

It is painfully obvious in considering the above facts, that Petitioner Engineer R. L. Martin was not afforded a full fair and impartial investigation. The Carrier's failure to produce the principle witnesses at the hearing and their ignoring the Representative's objections about the same, leave Petitioner's hearing seriously flawed. It is obvious that a miscommunication occurred on July 16, 1997, but there were many other parties involved in that miscommunication that were eyewitnesses to the incident and not made available for examination. The Carrier did not come to the hearing looking to develop all the facts or give Petitioner Martin a fair hearing. They came there with the specific task of placing blame on Petitioner and his crew. There is nothing fair and impartial about a process of that nature.

Their reasons behind their prejudicial attitude at the hearing is obvious as well. They intended to cover up the mistakes by all the railroads involved in this matter by placing ~~the~~ **the guilt** at Petitioner Martin's feet. If that was not the case, then why were they issued 11 citations regarding this incident?

We have unrefuted testimony at the hearing that both CSX, Southern and Public Belt Timetables have not been made available to employees in this service. We have unrefuted testimony that these materials have in fact been requested on more than one occasion from the proper supervisor and not produced. We have unrefuted testimony that, even though the CSX is using a different rule book, employees have never been schooled on the CSX rules governing operation over this territory.

We have direct testimony from Petitioner's immediate supervisor confusing the two CSX mainlines in question. We have direct testimony that even though these tracks are designated as the No. 1 and No. 2 by the timetable, they are commonly referred to by employees of the CSX and Southern Railroads as "northbound and southbound" mains thus further confusing the issue.

We have unrefuted testimony that Petitioner Martin and his crew had permission from the CSX Yardmaster to occupy the tracks under his authority on both the north and south side of the manual interlocking at NE Tower. We have direct testimony that once Petitioner Martin was given permission to occupy the interlocking at NE Tower no other trains by operating rules or signal indication, could occupy that interlocking with conflicting movement regardless of which mainline Petitioner was on.

This case is not about negligence on the part of a Locomotive Engineer. It is about a Locomotive Engineer who was not properly qualified to run over foreign territory. It is about improper supervision that allowed a confusing situation to exist. It is about railroads that care more about a bottom line profit than they do the safety of their employees. Petitioner Martin should not be required to pay the ultimate price for the negligence of the railroads.

You must request a specific set of remedies from the LERB in order for the appeal to be valid. These remedies should be spelled out so there is no doubt about what relief the petitioner is seeking.

In light of the above facts Petitioner Martin request the following remedies from the Locomotive Engineer Review Board:

1. Instruct Union Pacific to remove all reference to the incident that happened on July 16, 1997 from their files and any discipline that was associated with the same.
2. Instruct Union Pacific to remove from their records any reference to the decertification issued by them on behalf of the FRA regarding the incident in question.
3. Instruct Union Pacific to compensate Engineer Martin for all time lost associated with the incident in question.

Your consideration in the above matter will be greatly appreciated.

Respectfully Submitted,

Gil Gore