

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

JAN - 4 2002

Locomotive Engineer Review Board

Decision Concerning

Union Pacific Railroad Company's Revocation of
Mr. T. L. Randall's Locomotive Engineer Certification
FRA Docket Number EQAL 2001-51

Decision

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of Union Pacific Railroad Company (UP) to revoke Mr. T. L. Randall'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. 240). The Board hereby disapproves UP's decision to revoke Mr. Randall's certification for the reasons set forth below.

Background

Mr. Randall (Petitioner) filed a petition with FRA requesting FRA review of UP's decision to revoke his certification. The petition asserts that the revocation was improper because:

- (a) Mitigating circumstances surrounding the event should have been taken into consideration by the railroad. These included the following: Petitioner was not operating the train at the time of the incident; Petitioner was closely supervising the student engineer operating the train; the student engineer operating the train unexpectedly released the brakes on the train prematurely, which caused the excessive speed; Petitioner had little experience over the territory involved; and Petitioner was never properly qualified over the territory by the railroad.
- (b) The incident was minimal in nature and had no direct or potential impact on safety. Railroad would not have discovered the occurrence of this incident had Petitioner not explained circumstance to the dispatcher and no damage resulted due to the incident.

Pursuant to 49 C.F.R. 240.405(b), (c), a copy of the petition was sent to the railroad. 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.

Railroad's Response

The railroad argues that there are no mitigating factors to warrant not revoking Petitioner's certification. The railroad contends that the operating rule violated by Petitioner required the train's brakes to be placed in emergency braking once it reached five miles per hour (MPH) over

the maximum authorized speed. Petitioner neither placed the train in emergency nor advised the student engineer to place the train in emergency. Consequently, the train reached 20 MPH over the maximum authorized speed. UP asserts that although the student's mistake allowed the train to start accelerating, Petitioner's inaction allowed the train to accelerate to 35 MPH and that it was the helper engineer's action that stopped the train.

The railroad further contends that Petitioner had a total of 132 student trips that ended in August 1999, and since that date had over 375 trips as a qualified engineer. These trips were over various routes and grades as his seniority permitted and he had a number of check rides. The railroad also asserts this incident had a definite potential impact on safety based on the incidents that have occurred at the location in the past.

Board's Determination

Based on its review of all of the information submitted, the Board has determined that:

- (1) On January 29, 2001, Petitioner was called to work as Instructor Locomotive Engineer for Student Engineer R. A. Walker on freight train ANPLB-26 operating from Yermo, California to West Colton, California. Petitioner was accompanied by Student Engineer Walker and Conductor J. D. Pearson.
- (2) At approximately 4:45 a.m., while operating over Burlington Northern Santa Fe Railway (BNSF) trackage through Cajon Pass, Petitioner allegedly allowed the train for which he was acting as an Instructor Engineer to exceed the maximum authorized speed by more than 10 MPH and failed to place the train into an emergency brake application when the train's speed exceeded the maximum allowable speed by more than 5 MPH.
- (3) The alleged violation occurred as Petitioner and crew were operating westward on Main Track No. 2, descending a 3.2 percent grade. At the time, Student Engineer Walker was operating the train which was required to have helper locomotives and was restricted to a speed of 15 MPH while negotiating the grade.
- (4) Shortly after cresting the grade, Petitioner realized that too much air brake was applied to the train which caused the train to continually slow. Petitioner discussed the situation with Student Engineer Walker advising him to stop the train at Cajon where they could release the brakes and recharge the brake system. The record indicates that Student Engineer Walker misunderstood Petitioner and released the train's brakes prior to reaching Cajon. In approximately one minute and twenty-eight seconds the train accelerated from 9 MPH to 35 MPH. Petitioner immediately applied the brakes, went to full dynamic braking, and told the engineer on the rear helper locomotives to go to full dynamic braking effort.

Petitioner continued to make further brake pipe reductions to control train speed. As Petitioner was in the process of making a full service brake pipe reduction the train's brakes were placed into emergency by the engineer on the helper locomotives. At the time the train's brakes were placed in emergency, the train was traveling approximately 34 MPH. The train was stopped, the dispatcher was notified, and the incident was investigated by the railroad.

- (5) By letter dated January 29, 2001, Petitioner was notified that his certification was suspended. Petitioner was notified by letter dated February 2, 2001, that a formal investigation would be conducted on February 8, 2001.
- (6) A formal investigation was held on February 8, 2001. By letter dated February 16, 2001, UP informed Petitioner that his certification was revoked for a period of one (1) month for exceeding the maximum authorized speed by more than 10 MPH and for failing to initiate an emergency brake application when the train's speed exceeded the maximum allowable speed by more than 5 MPH.

Based on its review of the information provided, the Board finds that there are sufficient equitable considerations in this instance to determine that UP did not properly revoke Petitioner's certification as provided for in 49 CFR Part 240.

Analysis of the Petition

In reviewing petitions, the Board considers three issues in determining whether revocation of certification was proper under Federal regulations, See 49 C.F.R. 240.405(f). First, whether substantial evidence exists to support the railroad's factual findings in its decision, See 58 FR 18982, 19001 (1993). Second, whether procedural irregularities committed at the railroad investigative hearing caused the petitioner substantial harm. Id. Finally, whether the railroad's legal interpretations are correct based on de novo review. Id. Factual disputes include "whether certain equitable considerations warrant reversal of the railroad's decision on the grounds that, due to certain peculiar underlying facts, the railroad's decision would produce an unjust result not intended by FRA's rules." Id.

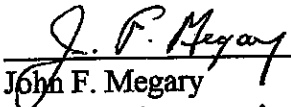
Although the fact that Petitioner allowed the train for which he was acting as an Instructor Engineer to exceed the maximum authorized speed by more than 10 MPH and failed to initiate an emergency brake application when the train's speed exceeded the maximum allowable speed by more than 5 MPH is not in dispute in this case. The Board finds that there are sufficient equitable considerations to warrant reversal of the railroad's decision to revoke Petitioner's certification. FRA intended that revocation actions be taken against an engineer when the engineer's misconduct causes operational noncompliance. The Board believes that decertification is appropriate when a safety rule violation is the direct and immediate responsibility of the locomotive engineer, See 49 C.F.R. 240.307(i)(1). The Board finds that Petitioner was not directly responsible for the violation of the safety rules that occurred in this instance. The Board's review of the record indicates that the Student Engineer was responsible for releasing the train's brakes, which directly caused this incident to occur, See Transcript at 82-88. The Student

Engineer's action caused the train's speed to increase from approximately 9 MPH to 35 MPH in less than 1 ½ minutes. Petitioner was neither aware or forewarned of the Student Engineer's intent to release the train's air brakes. The record indicates that Petitioner was diligent in his supervision of the Student Engineer until such time as the Student Engineer released the brakes on the train. Although the Board recognizes that Petitioner should have immediately placed the train into emergency, the Board believes that Petitioner's failure to take such action was the result of his inexperience on the involved territory. That is, Petitioner's inexperience allowed him to have the mistaken belief that he could gain control of the train before it reached excessive speed.

The Board finds that the railroad failed to establish that Petitioner was properly qualified and sufficiently experienced on the involved territory. The record indicates that Petitioner was promoted to his current position in August of 1999. Uncontested testimony indicates Petitioner was qualified on the territory for approximately six (6) days prior to the occurrence of this incident. However, Petitioner was never given a skills performance evaluation by a Designated Supervisor of Locomotive Engineer's on the involved territory or on the type of grade involved in this instance, See Transcript at 93-98. Petitioner's uncontested testimony indicates that he was deemed qualified on this grade and territory because he was given a check ride on the Silverwood territory grade on UP trackage, See Transcript at 94. However, the grade on Silverwood territory is substantially less than the grade on the territory where this violation took place. The grade on the Silverwood territory is 2.2 percent, whereas, the grade on the BNSF #2 South Track, where this incident occurred, is 3.2 percent. Federal regulations require that locomotive engineers be given a skills performance test under the most demanding circumstances they could expect to operate, See 49 C.F.R. 240.127. This is especially true where heavy grade operations are involved. The Board finds no evidence in the record indicating that Petitioner was provided a proper skills performance test over the type of grade involved in this instance. Consequently, the Board believes that Petitioner's certification should not be revoked due to the railroad's failure to adequately familiarize and qualify Petitioner on the involved territory when considered in conjunction with the fact that Petitioner was not directly responsible for the violation of the involved safety rules. On the basis of these equitable considerations, the Board finds that the railroad's decision revoking Petitioner's certification under these specific circumstances would produce an unjust result not intended by FRA's rules.

Based on the above findings, the Board hereby disapproves UP's decision to revoke Petitioner's certification as a locomotive engineer in accordance with the provisions of 49 C.F.R. Part 240.

Issued in Washington, D.C. on JAN - 4 2002



John F. Megary
Chairman, Locomotive
Engineer Review Board

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.

SERVICE LIST EQAL 2001-51

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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Mr. Robert L. Pugmire
Director Operating Rules
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For Lynn A. Conklin

John Conklin
Railroad Safety Specialist

JAN - 4 2002

Date

cc: DOCKET EQAL 2001-51