

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

Locomotive Engineer Review Board

Review and Determinations Concerning the
Union Pacific Railroad Company's
Decision to Revoke Mr. E.W. Rhoads'
Locomotive Engineer Certification

FRA Docket No. EQAL 99-20

Decision

The Locomotive Engineer Review (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of the Union Pacific Railroad Company (UP) to revoke Mr. E.W. Rhoads' (Petitioner) locomotive engineer certification (certification or certificate) in accordance with the provisions of Title 49 Part 240 of the Code of Federal Regulations (49 C.F.R. 240). The Board hereby determines that UP's decision to revoke Mr. Rhoads' certification was improper pursuant to 49 C.F.R. Part 240 for the reasons set forth below.

Background

Both Petitioner and UP agree on the fundamental facts in this case. On September 29, 1998, Petitioner and Conductor J.L. Bridge were operating Train IHNOA-27 at restricted speed at Niland, CA. At approximately 11:25 p.m., UP Dispatcher No. 46 instructed Petitioner to wye (turn) his locomotive consist. During this move and after receiving permission to pass a stop signal, Petitioner ran through an improperly lined switch, resulting in a derailment with over \$118,000 in damages.

By letter dated October 2, 1998, Petitioner was directed to attend a joint company disciplinary/FRA decertification hearing. Based on the findings of this October 7 hearing, UP notified Petitioner on October 16 that his certificate was revoked for 30 days for violating § 240.117(e)(2), for failing "to stop short of a switch not properly lined, running through a main track switch while operating at restricted speed resulting in derailment..."

By letter dated February 20, 1999, Petitioner appealed UP's decision to revoke his certification. UP responded on March 25.

Petitioner's Assertion 1: UP violated § 240.307(b) in its October 2, 1998 notice of hearing, and in its October 16, 1998 notice of certificate revocation, by basing its decision not on the hearing record, but on language from a carrier timetable that was no longer in effect, as follows :

This decision is based on violations listed above as they relate to 49 CFR Part 240.117, the applicable portion which reads: (e) A railroad shall consider violations of its operating rules and practices that involve: (2) Failure to adhere to limitations concerning train speed when the speed at which the train was operated exceeds the maximum authorized speed, whichever is less. Note: Restricted speed can also result in revocation if violation results in excess of \$6,600 in damages to track and equipment. (Petitioner Exhibits 2 and 3)

Railroad's Response 1: The quote "Note: Restricted speed can also result in revocation if violation results in excess of \$6,600 in damages to track and equipment," although not specifically contained in Part 240, is based upon a 1995 interpretation by FRA Director, Office of Safety Enforcement, Edward R. English, concerning restricted speed events which would result in certificate revocation. This interpretation states that:

Violation of the railroad restricted speed rule which results in any of the following, is per se violation of 49 CFR 240.117 (e)(2):

- collision with railroad rolling equipment that results in property damage exceeding the FRA reporting threshold or a reportable injury.
- movement through improperly lined switch or over a derail resulting in derailment of equipment which exceeds the reporting threshold.

Petitioner's Assertion 2: UP's decision to revoke Petitioner's certificate did not take into account important factors that contributed to the derailment. Dispatcher No. 46 authorized Petitioner and Conductor Bridge to turn their locomotive consist and return to their train, with the conductor riding the point and controlling the movement. She then radioed the crew to hand operate a switch at the east end of Niland, and to pass a signal displaying a stop indication, when she should have ordered the crew to hand operate two affected switches.

Petitioner, running long hood forward, with lighting only from the locomotive, was not in a position to observe the second switch. The conductor flagged Petitioner through a dual control switch that had been lined against the intended move. Petitioner proceeded under the direction of the conductor, who had lined the first switch, never exceeding 11 miles per hour. Petitioner felt his train derail at the second switch. Due to operating conditions Petitioner could not see that the switch points were not properly lined. The entire culpability for the fault in this move lies with the dispatcher and the conductor.

At Petitioner's October 7, 1998 hearing, UP Manager of Operating Practices G. R. Griffin admitted "...[that the dispatcher] had no way of determining which way the switch was lined because there was still an indication on it and I can tell you that the switch was not blocked" (Hearing Transcript, p. 49-50). The dispatcher should have ordered the crew to operate two switches. Mr. Griffin also admitted that the dispatcher had violated "...at least two rules" (Hearing Transcript, p. 47).

At the hearing, Mr. Griffin conceded that Petitioner may not have known that the switch had not been properly lined, when he stated that “[w]hen they were moving westward, with the lighting and every there - and everything at that location, they very well could have thought that the signal, that the switch was lined properly”(Hearing Transcript, p. 46).

Railroad’s Response 2: The dispatcher and conductor were culpable, but Petitioner violated an operating rule that may have prevented this incident. UP Rule 9.13.1 , Hand Operation of Dual Control Switches, requires train crews to receive track and time that includes the switch, and permission to operate the switch, before operating a dual control switch by hand (UP Attachment B). Compliance with this rule would have clarified the intended movement to the crew and the dispatcher. Additionally, since the crew was proceeding past a signal requiring stop, all dual control switches to the next control point would have had to be hand lined. Had Petitioner complied with this rule requirement, the switch where the train derailed would have been lined properly, or at a minimum Petitioner would have discovered the run-through switch and prevented the derailment.

After Petitioner turned his locomotive consist and was returning to his train, he was operating long-hood forward. When the incident occurred, however, Petitioner and Conductor Bridge, who were required by the rule to operate at restricted speed, were in the cab of the controlling locomotive faced in the direction of movement with the short hood forward.

Petitioner’s Assertion 3: At the hearing, Conductor Bridge testified that when Mr. Griffin had called to offer him “...a Level 4, 30 days off, no investigation and the Engineer goes back to work,” Mr. Griffin admitted that “[y]ou were set up”(Hearing Transcript, p. 82). UP did not dispute that they had made an offer to close out the entire matter if the conductor would accept full responsibility. Conductor Bridge refused this offer, causing Petitioner to suffer due to circumstances over which he had no control.

Railroad’s Response 3: Petitioner’s reference to a discipline offer made to Conductor Bridge is irrelevant, since this offer has no bearing on his decertification hearing which is mandatory regardless of Union Pacific discipline.

FRA's Determinations

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

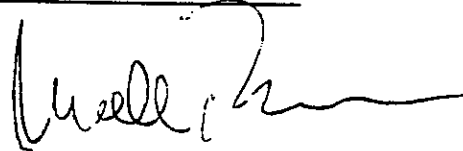
- (1) The crew had been given permission by the dispatcher to pass a stop signal and operate the dual control switch. Prior to the incident, Conductor Bridge was responsible for controlling the movement through a dual control switch that was lined against the movement of Petitioner’s train. Petitioner was operating with the long hood forward and taking signals from the conductor when they ran through the switch.

(2) Petitioner could not determine if the switch was properly lined. At the hearing, UP Manager of Operating Practices G. R. Griffin admitted that Petitioner could not have detected that the switch points had not been properly lined, so that even if Petitioner had complied with UP Rule 9.13.1 the derailment could still have occurred.

(3) Although Petitioner was operating at restricted speed which requires being able to stop within one-half his range of vision, Petitioner could not have been expected to see the improperly lined switch. Petitioner, operating with the long hood forward and taking signals from the conductor who was directing the movement, should not be held responsible for running through the dual control switch while turning the locomotive consist.

Based on these findings, the Board hereby grants the petition in accordance with the provisions of 49 C.F.R. Part 240.

Issued this day in Washington, D.C. _____

A handwritten signature in black ink, appearing to read "Mark H. McKeon", written over a horizontal line.

Mark H. McKeon
Chairman, Locomotive
Engineer Review Board

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

SERVICE LIST EOAL 99-20

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. E.W. Rhoads
35269 Wildwood Cyn Road
Yucaipa, CA 92399

Mr. Robert L. Pugmire
General Director-Operating Rules
Union Pacific Railroad Company
SLCC - Science and Industry Building
4600 South Redwood Road
Salt Lake City, UT 84123

John Conklin

John Conklin
Railroad Safety Specialist

JUL 22 1999

Date