

UNION PACIFIC RAILROAD COMPANY



August 10, 2000

SLCC - Science & Industry Building
Union Pacific Railroad Company
4600 South Redwood Road
Salt Lake City, Utah 84123
Phone: (801) 595-3843
Phone: (801) 595-3846
Phone: (801) 595-3847
Fax: (801) 595-3882
Data: 1421118
Data: 1794997

Ms. Renee V. Bridgers, Docket Clerk
U. S. Department of Transportation
Federal Railroad Administration
400 Seventh Street S.W.
Washington, D. C. 20590

Dear Ms. Bridgers:

RE: FRA Docket Number EQAL-2000-43, Petition submitted by Engineer Vaughn A. McCarty

In accordance with 49 CFR Part 240.405, Union Pacific Railroad submits the following information it considers pertinent to the petition. A copy is being provided to Mr. Vaughn A. McCarty, Petitioner

While Union Pacific will address all allegations by Petitioner that Union Pacific acted improperly in decertifying Engineer McCarty, the only consideration for decertification is that Engineer McCarty, while working as engineer on train ILCHO-09 on March 12, 2000 passed a red signal without authority.

Procedural Issues:

Petitioner argues that the hearing was conducted in manner that was not proper because he or his representative were not allowed to make an opening statement. The format used in conducting investigative hearings *is* proper. This format has been consistently used for years, and both the accused and any representatives are allowed to question all witnesses and make closing statements on behalf of themselves or the party they represent.

David Bader, Director Road Operations of the Houston Service Unit, testified on pages 25-29 of the transcript and made the statement that the stopping distance from the Approach to the Stop signal was inadequate for the train. The FRA did in fact study this and several other signals in the Englewood Yard for relocation and/or removal, but **did not require** any action as to the removal of the signal Mr. McCarty passed. Mr. Bader's testimony also included the statement that this signal has been at the same location for over twenty years and Mr. McCarty had operated over this subdivision for several years. (Emphasis added)

Statement of Facts:

Petitioner argues that the investigation transcript validates his assumption that the signal location was poor. However, petitioner has worked in this area as an engineer for the past 12 years (transcript page 71). This was not new territory for Engineer McCarty

as this was previously Southern Pacific territory, and Engineer McCarty is a former Southern Pacific engineer (transcript page 45). Further testimony shows that this signal has been at this location for at a minimum, the past five years and probably as long as 20 years, as testified to on transcript pages 28, 29, and 30.

Petitioner argues that the stopping distance is insufficient. However, that assumption can be interpreted in several different ways. Much depends on the train that is being operated, the speed of the train, and most important the alertness of the engineer operating the train. In testimony, by both the conductor and engineer, they indicated they did not believe the signal was for their movement. They made numerous statements about how they thought the Approach signal before the Stop governed movement only on the main track. Even if that statement is true, the signal indication moving into the Creosote Track displayed a Restricting indication, which requires the train to move at restricted speed. The train should be operated prepared to stop before the next governing signal. The FRA, nor did Mr. Bader discuss the signal location for a train moving at restricted speed. The train had traveled several thousand feet at restricted speed before passing the signal in question.

Testimony of the conductor on page 68 of the transcript indicates that they were in fact, operating an approach signal and the conductor testifies that he *thought* it was an approach to the intermediate signal. (Emphasis added) The conductor maintains that he was new to the territory, but later stated he had worked there since the previous June, making his time in the area nine months. If there was any doubt, as obviously there was, the crew should have taken the safe course, and stopped their train to ascertain which signal governed their movement.

It is apparent from Engineer McCarty's testimony on pages 72 and 73, that he was looking ahead, instead of what was directly in front of him. On page 75 of the transcript, the conductor testified that he lost sight of the signal. That, in and of itself, should have been warning to be cautious and adjust their movement accordingly.

Closing Statement:

Nothing in the investigation transcript or Petitioner's appeal warrants reversal of Union Pacific's decision to revoke Engineer McCarty's certificate. Union Pacific acted responsibly when it revoked Engineer McCarty's certificate for passing signal 108L displaying stop, a violation of 49 CFR 240.117(e)(1).

Sincerely,



B. Hunsaker, Manager
Engineer Certification & Licensing

cc: Vaughn A. McCarty, Engineer
2439 NE Loop 410, #1210
San Antonio, TX 78217