

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

Locomotive Engineer Review Board

Review and Determinations Concerning the
Kansas City Southern Railway Company's
Decision to Revoke Mr. L. Musgrove's
Locomotive Engineer Certification

FRA Docket Number EQAL 2003-59

JUL 8 2004

Decision

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of the Kansas City Southern Railway Company (KCS) to revoke Mr. L. Musgrove'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. Part 240). The Board hereby determines that KCS's decision to revoke Petitioner's certification was improper for the reasons set forth below.

Background

On July 9, 2003, at approximately 10:05 p.m., while operating Train LBC101, Petitioner allegedly operated past a red switch point indicator signal, through an improperly lined switch, and onto main track.

Petitioner was charged with a violation of 49 C.F.R. § 240.117(e)(1) – Failure to control a locomotive or train in accordance with a signal indication that requires a complete stop before passing it.

On November 12, 2003, the Brotherhood of Locomotive Engineers, on behalf of Petitioner, filed a petition requesting that FRA review KCS's decision to revoke Petitioner's certification. The petition asserts that the revocation was improper because:

- (1) Petitioner asserts that he was substantially harmed, because KCS suspended his certificate for one violation (i.e., stop signal violation) and then revoked his certificate for a different violation (i.e., occupying main track without authority). He was defending against one charge at the investigation, however, KCS found him guilty of another charge.
- (2) Petitioner asserts that he was substantially harmed, because KCS's decision letter did not comply with the regulation. The regulation, 49 C.F.R. § 240.307(e)

provides that a railroad may combine a discipline hearing and certification hearing, however, the railroad must make separate findings as to each. Petitioner submits that KCS did not make separate findings, because KCS issued notification of the certification consequences and disciplinary consequences in the same letter.

- (3) Petitioner asserts that he should not have been decertified, because FRA has indicated previously that this incident is not a decertifiable event.

Pursuant to 49 C.F.R. § 240.405(b) and (c), a copy of the petition was sent to KCS and the railroad was afforded an opportunity to comment. KCS did not respond to the petition.

Locomotive Engineer Review Board's Determinations

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

- (1) On July 9, 2003, at approximately 10:05 p.m., Petitioner was operating Train LBC101 in freight service.
- (2) The train crew, which consisted of the Petitioner and a conductor, was operating on single main track territory.
- (3) The crew entered the West Sibley Siding, waited for two opposing trains, and then proceeded to the switch. Petitioner saw that the switch point indicator signal was red but operated past it anyway. Upon realizing his mistake, Petitioner placed his train in emergency. Petitioner does not deny that he operated his train through the West Siding Switch at Sibley (MP 113.3). Petition at 3.
- (4) By letter dated July 10, 2003, Petitioner was notified that his certification was suspended for passing a stop signal without authority.
- (5) A combined railroad discipline and federal certification hearing was held on July 18, 2003.
- (6) By letter dated July 25, 2003, Petitioner was notified that his certification was revoked for occupying a main track without authority.

Analysis of the Petition

Petitioner's assertions 1 and 2 raise procedural issues. When considering a procedural issue, the Board will determine "whether substantial harm was caused the petitioner by virtue of the failure to adhere to the dictated procedures... [and a] finding of substantial harm is grounds for reversing the railroad's decision." 58 Fed. Reg. 18982, 19001 (April 9, 1993).

The Board disagreed with Petitioner's first assertion that he was substantially harmed by the discrepancy in the charges between his suspension notice and revocation notice. The suspension notice cited 49 C.F.R. § 240.117(e)(1), and the revocation notice cited 49 C.F.R. § 240.117(e)(4). Two violations (i.e., passing a stop signal without authority and occupying main track without authority) will always occur whenever an individual passes a stop signal.

Furthermore, in reviewing the hearing transcript, it is apparent that there was no confusion about the rule violation. KCS charged Petitioner with passing a stop signal, and Petitioner presented his defense accordingly.

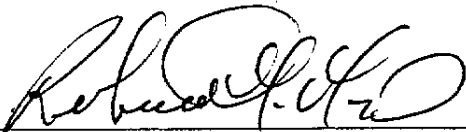
The Board disagreed with Petitioner's second assertion that KCS's decision letter did not contain separate findings. The Board believes that KCS's July 25, 2003 decision letter contained separate findings. In the third paragraph, KCS assesses Petitioner with a 45 day suspension and in the fourth paragraph, KCS notifies Petitioner that his certificate is revoked for one month. Petitioner's Exhibit 3. Thus, Petitioner did not prove that a procedural error occurred.

Petitioner's assertion 3 raises a factual issue. When considering factual issues, the Board will determine "whether there is substantial evidence to support the railroad's decision, and a negative finding is grounds for reversal." 58 Fed. Reg. 18982, 19001 (April 9, 1993).

The Board agrees with Petitioner that this was not an incident requiring revocation. The regulation, 49 C.F.R. § 240.117(e)(1), provides that "A railroad shall only consider violations of its operating rules and practices that involve [a] failure to control a locomotive or train in accordance with a signal indication . . . that requires a complete stop before passing it." The KCS General Code of Operating Rules (GCOR) does not consider a switch point indicator signal a stop signal that requires a complete stop before passing it. According the GCOR 8.10 "Switch Point Indicator," a red/dark aspect indicates that an engineer should "stop and inspect switch."

Based on the above findings and conclusions, the Board finds that KCS's decision to revoke Petitioner's certification as a locomotive engineer was improper and hereby grants the petition in accordance with the provisions of Title 49, Part 240 of the Code of Federal Regulations.

Issued in Chicago, IL on JUL 8 2004



Richard M. McCord
Chairman, Locomotive
Engineer Review Board

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

Locomotive Engineer Review Board

Review and Determinations Concerning the
Kansas City Southern Railway Company's
Decision to Revoke Mr. C. D. Wells'
Locomotive Engineer Certification

FRA Docket Number EOAL 2003-60

JUL 8 2004

Decision

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of the Kansas City Southern Railway Company (KCS) to revoke Mr. C.D. Wells' (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. Part 240). The Board hereby determines that KCS's decision to revoke Petitioner's certification was improper for the reasons set forth below.

Background

On September 1, 2003, at approximately 1:50 p.m., while operating Train LJA101, Petitioner operated through an improperly lined switch at the east switch at Century (MP 110.8) when he failed to control his train in accordance with a red switch point indicator signal that KCS considered a stop signal.

Petitioner was charged with a violation of 49 C.F.R. § 240.117(e)(1) – Failure to control a locomotive or train in accordance with a signal indication that requires a complete stop before passing it.

On November 12, 2003, the Brotherhood of Locomotive Engineers, on behalf of Petitioner, filed a petition requesting that FRA review KCS's decision to revoke Petitioner's certification. The petition asserts that the revocation was improper because:

- (1) Petitioner was substantially harmed, because KCS's decision letter did not comply with the regulation. The regulation, 49 C.F.R. § 240.307(e), provides that a railroad may combine a discipline hearing and a certification hearing, however, the railroad must make separate findings as to each. Petitioner submits that KCS did not make separate findings because the hearing officer issued both findings in the same letter.

- (2) Petitioner asserts that he should not be decertified, because he did not violate the regulation. The signal he passed was not a block signal conveying track authority; it was a switch point indicator signal conveying the position of the switch points. Therefore, Petitioner asserts that this is not the type of violation that could lead to a revocation.

Pursuant to 49 C.F.R. § 240.405(b) and (c), a copy of the petition was sent to KCS and the railroad was afforded an opportunity to comment. KCS did not respond to the petition.

Locomotive Engineer Review Board's Determinations

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

- (1) On September 1, 2003, at approximately 1:50 p.m., Petitioner was operating Train LJA101 in local freight service.
- (2) The train crew, which consisted of the Petitioner and a conductor, was performing switching duties in the siding at Century.
- (3) Petitioner operated through an improperly lined switch at the east switch at Century (MP 110.8) and failed to control his train in accordance with a switch point indicator that KCS considered a stop signal. Petitioner does not deny that he operated his train through the switch. Petition at 3.
- (4) By letter dated September 4, 2003, Petitioner was notified that his certification was suspended.
- (5) A combined railroad discipline and federal certification hearing was held on September 10, 2003.
- (6) By letter dated September 19, 2003, Petitioner was notified that his certification was revoked.

Analysis of the Petition

Petitioner's first assertion raises a procedural issue. When considering a procedural issue, the Board will determine "whether substantial harm was caused the petitioner by virtue of the failure to adhere to the dictated procedures... [and a] finding of substantial harm is grounds for reversing the railroad's decision." 58 Fed. Reg. 18982, 19001 (April 9, 1993).

The Board disagreed with Petitioner's assertion that KCS's decision letter did not contain separate findings. The Board believes that KCS's September 18, 2003 decision letter contained separate findings as to company discipline and federal certification. Petitioner's Exhibit 3.

Petitioner mistakenly believes that separate findings mean separate letters. That is not correct. Thus, Petitioner did not prove that a procedural error occurred.

Petitioner's second assertion raises a factual issue. When considering factual issues, the Board will determine "whether there is substantial evidence to support the railroad's decision, and a negative finding is grounds for reversal." 58 Fed. Reg. 18982, 19001 (April 9, 1993).

The Board agrees with Petitioner that this was not an incident requiring revocation. The regulation, 49 C.F.R. § 240.117(e)(1), provides that "A railroad shall only consider violations of its operating rules and practices that involve [a] failure to control a locomotive or train in accordance with a signal indication . . . that requires a complete stop before passing it." The KCS General Code of Operating Rules (GCOR) does not consider a switch point indicator signal a stop signal that requires a complete stop before passing it. According to the GCOR 8.10 "Switch Point Indicator," a red/dark aspect indicates that an engineer should "stop and inspect switch."

Based on the above findings and conclusions, the Board finds that KCS's decision to revoke Petitioner's certification as a locomotive engineer was improper and hereby grants the petition in accordance with the provisions of Title 49, Part 240 of the Code of Federal Regulations.

Issued in Chicago, IL on JUL 8 2004



Richard M. McCord
Chairman, Locomotive
Engineer Review Board