

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

Locomotive Engineer Review Board

Decision Concerning
Terminal Railroad Association of St. Louis'
Revocation of Mr. D.L. Croissant's
Locomotive Engineer Certification

FRA Docket Number EQAL 2012-07

Decision

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of the Terminal Railroad Association of St. Louis (TRRA), to revoke Mr. D.L. Croissant's (Petitioner) locomotive engineer certification (certification) in accordance with the provisions of Title 49, Part 240 of the Code of Federal Regulations (49 CFR part 240). The Board hereby grants Mr. Croissant's Petition for the reasons set forth below.

Background

Petitioner seeks review of TRRA's decision to revoke his locomotive engineer certification following an incident on April 19, 2011. Petitioner was the locomotive engineer on the Transfer, Industry, and Miscellaneous (TIM) assignment, referred to as job #123 TIM. Job #123 TIM was switching cars at the south end of TRRA's Madison Yard using a conventional train crew consisting of Petitioner and a conductor. At the same time, a Remote Control Locomotive (RCL) assignment, job #126 RCL, was switching in the same general vicinity as Petitioner's train. Both jobs were sharing Signal 16 at the control point (CP) interlocking, which allowed either train to "poke" onto the main track while performing their movements. Tr. 80. At approximately 1:30 pm, Petitioner remotely lined Power Switch 31 with his engine radio for an immediate train movement and began to proceed past Signal 16. Tr. 54-55. As the Petitioner operated job #123 TIM over Power Switch 33, job #126 RCL impacted the side of the rear locomotive on the job #123 TIM consist causing a reportable train accident. Ex. A.

On April 21, 2011, TRRA conducted a disciplinary hearing before a hearing officer to develop facts and place appropriate responsibility concerning the subject incident. The disciplinary hearing also served as an inquiry into whether Petitioner's certification should be revoked under 49 CFR § 240.117(e)(4) for occupying main track or a segment of main track without proper authority or permission. On April 26, 2011, TRRA sent Petitioner written notification that he had been dismissed based upon the findings of its formal investigation. Specifically, TRRA stated—

The facts...clearly show that the charges were proven and that [Petitioner was] was in violation of General Code of Operating Rules (GCOR) 1.1 – Safety, 1.1.1 – Maintaining a Safe Course, 1.1.2 – Alert and Attentive, 1.6 – Conduct, 1.47(B) – Duties of Crew Members (Engineer Responsibilities, 5.2.1 – Looking for Signals, 6.2.1 – Train Location, 6.3 – Main Track Authorization, System Special Instructions Item 12 – Job Briefings, Safety Rule 1000 – General Safety Responsibilities, and Safety Rule 1110 – Operating Hand Throw Switches and Derails.

On October 20, 2011, approximately six months after the disciplinary hearing took place and Petitioner had received his notice of dismissal, TRRA sent Petitioner written notification that his engineer certification had been revoked as well. TRRA’s revocation letter contained the same findings of GCOR violations as the April 26th dismissal letter and made no explicit findings related to 49 CFR § 240.117(e).

Petitioner’s Petition for Review was received by FRA on February 7, 2012. The Petition asserts three grounds for overturning TRRA’s revocation decision:

- (1) TRRA failed to render findings concerning Petitioner’s locomotive certification, which is separate from the railroad’s disciplinary action, within the time specified by 49 CFR § 240.307(c)(10).
- (2) TRRA’s decision to revoke Petitioner’s certification was not supported by substantial evidence.
- (3) TRRA failed to comply with the prescribed protocols of the Collective Bargaining Agreement (CBA) between TRRA and the United Transportation Union (UTU) while conducting the disciplinary hearing.

Pursuant to 49 CFR §§ 240.405(b) and (c), a copy of the Petition was sent to TRRA, and the railroad was afforded an opportunity to comment. TRRA did not submit a response for the Board’s consideration.

Board’s Determination

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

- (1) On April 19, 2011, Petitioner was the locomotive engineer on job #123 TIM, which was switching cars on track 69 at the south end of TRRA’s Madison Yard. Ex. C-1 and C-2.
- (2) At the same time, job #126 RCL was also at the south end of Madison Yard performing switching movements out of the bowl tracks. Ex. C-4.

- (3) Job #123 TIM and job #126 RCL were sharing Signal 16, which allowed the trains to “poke” onto the main track in the course of making their respective switching movements. Tr. 80.
- (4) It is common practice on TRRA for jobs working on the south end of Madison Yard to share Signal 16 while performing switching movements. Tr. 62-63, 98-99.
- (4) Sometime between approximately 12:45 pm and 1:00 pm, Petitioner informed the foreman of job #126 RCL that job #123 TIM would require occupying Signal 16. Tr. 82.
- (5) Once job #126 RCL cleared Signal 16, Petitioner remotely lined Power Switch 31 and began to proceed past Signal 16, which displayed a restricting signal. Tr. 21, 54-55.
- (6) Although Petitioner had previously contacted the foreman of job #126 RCL, he did not contact the foreman immediately prior to beginning the move past Signal 16. Tr. 94-95.
- (7) At approximately 1:30 pm, job #126 RCL collided with job #123 TIM in the vicinity of the Power Switch 33. Ex. A.
- (8) The Board finds that there is not substantial evidence to support a finding that Petitioner occupied main track or a segment of main track without authority or permission.

Analysis

Petitioner asserts that TRRA’s revocation decision was not supported by the evidence introduced during Petitioner’s disciplinary hearing. When the Board reviews the revocation decision of a railroad, it must consider whether there is substantial evidence to support a railroad’s factual findings that revocation of the locomotive engineer’s certification is warranted under FRA’s regulations. See 49 C.F.R. § 240.405(f); see also 58 Fed. Reg. 18982, 19001 (April 9, 1993). Based on the information available to the Board, TRRA has not presented substantial evidence to support its decision to revoke Petitioner’s locomotive engineer certification. The record provided simply does not reflect a violation of § 240.117(e)(4).

Section 240.117(e)(4) requires revocation of an engineer’s certification when it is demonstrated that the engineer “occup[ied] main track or a segment of main track without proper authority or permission.” The uncontroverted testimony at Petitioner’s disciplinary hearing was that job #123 TIM and job #126 RCL were sharing Signal 16 in Madison Yard on April 19, 2011. This allowed either job to “poke” onto the main line while switching as long as the track was not occupied by the other job. It was a regular and accepted practice at

Madison Yard for TRRA jobs to share Signal 16 when more than one job was working in the vicinity of the signal. Job #126 RCL was not occupying the signal when Petitioner initiated job #123 TIM's movement past the signal. Finally, Petitioner was able to remotely line Power Switch 31 for movement and began proceeding through Signal 16, which exhibited a restricted speed indication. Given these facts, Petitioner had authority to occupy the track when job #126 RCL struck his train.

Petitioner also asserts that TRRA's disciplinary hearing failed to comply with the CBA between TRRA and UTU and that the railroad improperly waited approximately six months before notifying him that his engineer's certification had been revoked. In light of the Board's factual findings, it declines to reach the procedural issues raised by Petitioner. However, suffice it to say that if a disciplinary decision can be issued then a revocation decision should be issued contemporaneous with that decision – not six months later. See 49 C.F.R. § 240.307(e) (requiring separate findings if a disciplinary hearing is combined with a revocation hearing).

Conclusion

Based on the above findings, the Board hereby grants the petition in accordance with the provisions of Title 49, Part 240 of the Code of Federal Regulations.

AUG 29 2012

Issued in Chicago, IL on _____.



Richard M. McCord
Chairman,
Locomotive Engineer Review Board

SERVICE LIST EQAL 2012-07

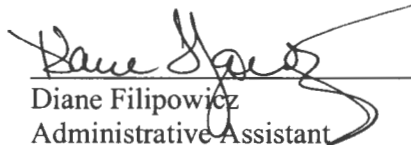
A copy of the Locomotive Engineer Review Board decision in this matter has been sent by certified mail to each person shown below.

Mr. D. L. Croissant
16 Circle Drive
Fairview Heights, IL 62208

Mr. David Wier, Jr.
General Chairman
United Transportation Union
260 Regency Centre
Collinsville, IL 62234

Ms. T.E. Furlow
Superintendent
Terminal Railroad Association of St. Louis
1201 McKinley Avenue
Venice, IL 62090

Mr. Anthony J. Bruns
Assistant Superintendent
Terminal Railroad Association of St. Louis
1201 McKinley Avenue
Venice, IL 62090



Diane Filipowicz
Administrative Assistant

AUG 29 2012

Date

enc: Post LERB Memo

cc: FRA DOCKET EQAL 2012-07

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Mr. D. L. Croissant 16 Circle Drive Fairview Heights, IL 62208		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
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Mr. David Wier, Jr. General Chairman United Transportation Union 260 Regency Centre Collinsville, IL 62234		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
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1. Article Addressed to:		B. Received by (Printed Name)	C. Date of Delivery
Ms. T.E. Furlow, Superintendent Terminal Railroad Association of St. Louis 1201 McKinley Avenue Venice, IL 62090		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
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1. Article Addressed to:	B. Received by (<i>Printed Name</i>)	C. Date of Delivery
Mr. Anthony J. Bruns Assistant Superintendent Terminal Railroad Association of St. Louis 1201 McKinley Avenue Venice, IL 62090	D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
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