U.S. Department
of Transportation

Federal Railroad Administration

Memorandum

Date: February 3, 2004 Reply to Attn of: OP-04-16

Subject: Technical Resolution Committee: Part 240 - Wrecking Operations; Multiple Decertification Events During Same Duty Tour

Original Signed By:
From: Edward W. Pritchard
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To: Regional Administrators

Attached is OP Technical Bulletin OP-04-16, which contains FRA's interpretations of the two locomotive engineer qualification and certification issues referred to above. These interpretations were produced by the Operating Practices Technical Resolution Committee (TRC) meeting in February 1996.

This Technical Bulletin is also being issued as Operating Practices Safety Advisory (OPSA-96-05), which is being distributed to our rail industry customers through the Association of American Railroads, the United Transportation Union, the Brotherhood of Locomotive Engineers (including the American Train Dispatcher's Department), and the American Short Line and Regional Railroad Association.

Regional personnel may distribute copies of this Technical Bulletin to local railroad managers and labor representatives.

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Federal Railroad Administration
Operating Practices Technical Bulletin (OP-04-16)
Operating Practices Safety Advisory (OPSA-96-05)

49 CFR Part 240
Qualification and Certification of Locomotive Engineers

Wrecking Operations

Several incidents have been brought to FRA's attention involving the operation of locomotives by uncertified persons during wrecking operations. Some have taken the position that these operations are de minimis in nature and are neither directly associated with railroad operations nor applicable to the intent of Part 240. Others have indicated that these operations are conducted while personnel are located in close proximity to equipment and are therefore, sensitive in nature, requiring the expertise and training intrinsic to engineer certification.

By definition, FRA excludes from engineer certification any person who:

> "(1) moves a locomotive or group of locomotives within the confines of a locomotive repair or servicing area in which the testing, servicing, repair, inspection or rebuilding of locomotives is under the exclusive control of mechanical department personnel, and the area is protected by a blue signal displayed at or near a switch providing entrance to or departure from the area; or
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> (2) moves a locomotive or group of locomotives for distances of less than 100 feet and this incidental movement of a locomotive or group of locomotives is for inspection or maintenance purposes."

The language is clear and unambiguous. Except for these two exclusions, nowhere is it stated, nor intended, that anyone other than a certified locomotive engineer is permitted to operate a locomotive or locomotives with cars attached. Conversely, the language is clear that there is no exclusion as to "where" a locomotive may be moved for the purposes of inspection or maintenance as long as this distance is less than 100 feet. Clearly, the movements of locomotives and/or cars during wrecking operations are not provided for within the regulation. The prime function of a wrecking operation is to "clear the railroad of damaged equipment" in order to restore service. In so doing, it is not uncommon for the rerailed locomotive(s) and/or equipment to be moved to locations beyond the wreck site, thereby extending these operations.

FRA Policy: It is FRA's belief that the operation of a locomotive(s) during wrecking operations is beyond the scope of the aforementioned exclusions and, therefore, requires the railroad to conduct these operations in the same manner as any other locomotive operation, i.e., with a certified locomotive engineer.

Multiple Decertification Events During Same Duty Tour

FRA has recently received petitions from engineers who have been decertified for multiple events during the same tour of duty, resulting in one (1) to (5) year decertification periods.

In response to these petitions, FRA has found that the regulation is silent concerning that which constitutes a single incident for decertification purposes. The closest regulatory guidance is found in 240.117(f) which deals with multiple violations during the course of a single incident. It reads as follows: "If in any single incident the person's conduct contravened more than one operating rule or practice, that event shall be treated as a single violation for the purposes of this section."

This provision prevents engineers from receiving excessive penalties involving multiple rules violations that occurred during a single incident, such as passing a stop signal without first stopping. The engineer violated a stop signal rule and in so doing, entered a main track without authority, thus violating another rule. Under these circumstances, the engineer is only charged with one rule violation.

This provision does not, however, address those events that are set apart from the original event by time, circumstance or distance. It can be argued that unless there is a nexus of common denominator between the instances of operational misconduct, logic and equity demand, that each instance be treated as a separate (single) incident.

Conversely, if multiple incidents can occur during a single tour of duty, there is or at least appears to be, a lack of the progressive discipline on which the regulation is based. It is not beyond the realm of possibility that an engineer could report for duty with a clean record, and yet by the time he goes off duty, he could be subject to a 5 year decertification for the commission of 3 decertifiable offenses.

FRA Policy: A single incident is a unique identifiable occurrence caused by an operational error of an engineer. It is possible for an engineer to be involved in more than one single incident during a tour of duty if these incidents are separated by time, distance or circumstance. Recognizing that some cases may be difficult calls, FRA has provided the following scenarios.

Scenario 1: An engineer operating a train from Chicago to St. Louis overlooks a 45 mph speed restriction for a car in his train and operates at the maximum speed of 60 miles per hour. He repeatedly accelerates to this speed after making intermediate stops.

Question: Is this a single incident, or does a new single incident occur each time the engineer operates above 45 mph?

Answer: This is a single incident.

Scenario 2: Assume the same facts as Scenario 1, then assume that the engineer passes a signal requiring a stop at Alton.

Question: Is passing the signal at Alton a single incident?

Answer: Yes.

Question: Is the engineer therefore subject to two de-certification proceedings, one for the excess speed and one for passing the signal?

Answer: Yes.

As a consequence of multiple decertification events occurring within a single tour of duty, there appears to be a conflict with the intent of the progressive ineligibility periods for certification. As applied, engineers would not be afforded any probationary periods between events for any remedial corrective actions. In order to address this paradox, FRA is considering proposing that the decertification periods under Part 240.117 be revisited. FRA will place this issue on the agenda of the Railroad Safety Advisory Committee for consideration.

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