

Overview Presentation

Locomotive Engineer Review Board & Operating Crew Review Board

12/9/2016



U.S. Department of Transportation
Federal Railroad Administration

LERB - OCRB

- LERB was established in 1992 and future plans will be to merge and become one - Operating Crew Review Board (OCRB),
- Currently conductor cases come under OCRB
- Engineers align under LERB
- Same process for both just different names



Current LERB/OCRB Members

Current Board Members

- Chairman – Kirk Gill DRA Region 4
- Coordinator – Stu Swartz Region-4

D. Van Horn Region-4

K. Di Nigro Region-2

J. Gee Region-2

R. Rusnak, Region-3

R. Conner, Region-7

S. Thompson, Region-8



LERB/OCRB Key Terms

- Boards most common rulings:
 - Grant (agree with petitioner)
 - Deny (agree with railroad)
 - Order (need more info)
 - Dismiss / Withdrawn – petitioner or Railroad decision
 - Remand (re-try the case, RR didn't address the important factual issues)



Purpose of the Board

- The LERB / OCRB Board is a third neutral party between the carrier and labor
- Any person who has been denied certification, denied recertification, or has had his or her certification revoked and believes that a railroad incorrectly determined that a conductor or engineer failed to meet the qualification requirements of 49 C.F.R. Parts 240 or 242 when making the decision to deny or revoke certification, may petition the Board to review the railroad's decision.



Decertification's 1992 to 2017 – Class I Railroads

Statistics Overall

- 17,800 decertification's since 1992
- About 10 % of decertification's are appealed to the board
- 60 % Denial and 40 % Grants
- Board reads on average 73 cases / year
- Since 1992 – Board has voted on 1,783



LERB / OCRB

- 2017 76 Cases Reviewed & Voted on
- Deny 45 – 54%
- Grant 18 – 24%
- Dismiss 6 (Ex. Time Limits) – 8%
- Order 2 – 3%
- Remand 4 – 5%
- Tabled 1 (under FRA Administrative review) -1%



The Process



- Triggering incident → Waiver or No Waiver
 - Sign a waiver or decide go to investigation
 - Sign a waiver * rights to appeal – GONE - process is over
- Letter of Suspension tells the person why certification was suspended
- Certificate Suspension
- Railroad Hearing / Investigation
- Railroad decides to Revoke Certification
- Engineer / Conductor decides to Appeal to LERB or OCRB

The Process



- Submit Petition to the WDC within 120 days of revocation
- WDC notifies the railroad
- Railroad has 60 days to respond to petition
- Petition is placed in the pipeline for Board to Review
- Case is placed on the agenda for Board to vote on
- Decision made, Chief Counsel informed of decision
- Chief Counsel writes a decision letter



The Process



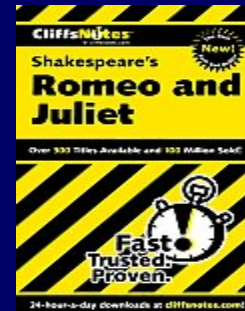
- Decision letter is reviewed by the voting board members
- Decision letter is mailed to Petitioner, Railroad and Labor Organization

*** Important Note***

- **If Conductor or Engineer signs a waiver he or she loses their right to appeal, they can not appeal to the Board.**



Cliff Notes Version



Hearing / Investigation

Railroad Decision – Revoke Cert

Person must be notified in writing

Engineer or Conductor decides to Appeal

Clock Starts – 120 days from RR Decision

Railroad 60 days to respond

Board Votes

Decision Letter (Grant or Deny)



The Process is long, why?

General Guidance

From the revocation date, to the written decision letter issued by Chief Counsel in WDC, the average review process the petitioner waits about, 9 to 12 months

LERB / OCRB Timeline

- Factors that affect this timeline
- Petition to the FRA written by Labor Organization - up to 120 days
- Railroad Response – within 60 days
- Case load, the amount of cases in the “Hopper” for review
 - some petitions are hundreds of pages



Conductors Revocable Events

- 1) Signal indication
- 2) Train speed
- 3) Brake test
- 4) Occupy track without proper authority
- 5) Tampering with safety devices
- 6) Drug and alcohol prohibitions



Conductor Revocable Events cont'd.

- 7) Shoving / Point Protection
- 8) Equipment in the foul
- 9) Hand Operated Switches
- 10) Main Track Switches
- 11) Crossover switch procedures
- 12) Hand operated derails



Conductor Revocable Events cont'd.

Case Example

As a result of this employee throwing this switch with equipment in the foul, he has violated Part 218 Subpart F. Is this a revocable event?



Appropriate Action

Conductor Certification could be revoked if he or she fails to take “appropriate action” to prevent the violation from occurring



Defining Appropriate Action

- It is not included in the definitions of CFR 242
- 242.403 states – appropriate action does not mean that a conductor must prevent a violation from occurring at all costs; the duty may be met by warning an engineer of a potential or foreseeable violation.



Fact-Based Analysis

The decision to revoke a conductor's certification must be made on a case-by-case basis depending on the facts of the particular situation.

An example is provided in the Part 242 rulemaking:

" [A]ppropriate action' depends on the situation. For example, if a conductor provides a warning with plenty of distance, then the conductor has likely met his or her duty. However, the conductor of a train provides a warning for the first time one second before the train passes a stop signal the conductor was aware of 3 miles back, likely has not met his or her duty."

Conductor Certification Final Rule, 76 FR 69802, 69811-69812 (Nov. 9, 2011).

Appropriate Action

Six Factors to Consider:

- ✓ Was the violation foreseeable under the particular factual circumstances?
- ✓ Was a proper warning given or other corrective action taken?
- ✓ Was the warning given in enough time to do something about it?
- ✓ How old was the warning? Was it given 20 miles or 2 hours before the signal?
- ✓ What was the conductor trained to do?
- ✓ What do the railroad operating rules require?



OCRB Action Items for the labor

FACT: The Railroad *MUST NOT* revoke the certificate if there is an intervening cause.

FACT: The Railroad can elect *NOT* to revoke a certificate if it determines the event was minimal in nature and had no direct or potential effect on safety.

- The reasons must be maintained by the railroad.

OCRB Action Items for the labor

- Some hearings are good, other not so much.
- **Focus on revocable event !!!**
- What is obvious at the hearing, not obvious to Board 9 or 10 months later when we review the case
- Color Photos, Color CAD, Color Event recorder downloads

Questions



Appendix E

| Revocable Event | | Application of Revocable Events | | | | | | |
|-----------------|---|---|------------------------------------|------------------------------------|------------------------------------|--|---|--|
| | | Periods of Revocation | | | | | Employees with Multiple Certifications | |
| | | Main Track | | | | Other than Main Track Where Restricted Speed or the Operational Equivalent Is in Effect | Main Track or Other than Main Track | |
| | | 1st Offense | 2nd Offense Within 24 Months | 3rd Offense Within 36 Months | 4th Offense Within 36 Months | | No Offense Within Previous 12 Months | Offense (as a Conductor) |
| 1 | Signal requiring complete stop before passing | 30 Days | 6 Months | 1 Year | 3 Years | Not Applicable | Employee May <u>Not</u> Work as an Engineer During the Period of Revocation | Employee May <u>Not</u> Work as a Conductor During the Period of Revocation |
| 2 | Restricted Speed & Speed; 10 mph over | | | | | | | |
| 3 | Required Air Brake Test | | | | | | | |
| 4 | Occupying Main Track without Authority | | | | | Half Revocation Period | Employee May Work as an Engineer During the Period of Revocation | Not applicable |
| 5 | Disabling a Safety Device | | | | | | | |
| 6 | Shoving Movements | | | | | | | |
| 7 | Equipment Fouling Adjacent Tracks | | | | | | | |
| 8 | Hand Operated Switches (Crossovers) | | | | | Not Applicable | Employee May Work as an Engineer During the Period of Revocation | Not applicable |
| 9 | Hand Operated Switches Connected to Main Track | | | | | | | |
| 10 | Hand Operated Crossover Switches (before & after movement) | | | | | Half Revocation Period | Employee May Work as an Engineer During the Period of Revocation | Not applicable |
| 11 | Hand Operated Derails | | | | | | | |
| 12 | Drug & Alcohol | Different periods of revocation may be applied (see 242.403 & 242.115) | | | | Not Applicable | Employee May <u>Not</u> Work as an Engineer During the Period of Revocation | Employee May <u>Not</u> Work as a Conductor During the Period of Revocation |