Overview Presentation

Locomotive Engineer Review Board & Operating Crew Review Board
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  - Dismiss / Withdrawn – petitioner or Railroad decision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 → Wavier or No Wavier
  - 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
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?
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.
OCRBB 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

### Application of Revocable Events

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

Different periods of revocation may be applied (see 242.403 & 242.115)