

UNION PACIFIC RAILROAD COMPANY

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September 17, 2001

FRA-2001-9837-10

To All Parties of Record:

Re: FRA-Locomotive Engineer Certification Case
C. L. Daniels, Hearing Petitioner Docket No. EQAL 00-51
DOT Docket No. FRA 2001-9837

Dear Sirs and Madams:

Enclosed please find a copy of Respondent Union Pacific's response to the Petitioner's Statement of Issues and Claim for Relief.

Yours truly,

W. Scott Hinckley
W. Scott Hinckley

Enclosure

OFFICE OF CHIEF COUNSEL
2001 SEP 20 PM 4: 01
FEDERAL RAILROAD
ADMINISTRATION

U. S. DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION
WASHINGTON, D. C.

FRA-LOCOMOTIVE ENGINEER CERTIFICATION CASE
C. L. DANIELS, HEARING PETITIONER
DOT DOCKET NO. FRA-2001-9837
FRA DOCKET NO. 00-51

UNION PACIFIC RAILROAD COMPANY'S
RESPONSE TO HEARING PETITIONER'S
STATEMENT OF ISSUES AND CLAIM FOR RELIEF

UNION PACIFIC RAILROAD COMPANY ("UP"), pursuant to Order No. 1 of Hearing Officer G. Joseph King, hereby responds to hearing Petitioner's Statement of Issues and Claim for Relief as follows:

I. **ISSUES OF LAW:** (1) It is UP's position that the issues of law set forth by the Hearing Petitioner are not appropriate for a de novo hearing under the FRA regulations. UP would like to direct the Hearing Officer's attention to footnote number 9 on page 5 of Order No. 1. In that footnote the Hearing Officer underlined the fact that the primary purpose of the de novo hearing was "not to conduct an appellate review of the LERB's decision or the railroad's actions."

All three issues of law set forth by the Hearing Petitioner begin with "Whether Union Pacific Railroad Company's decision " and "Whether Union Pacific Railroad Company erred". These stated issues are a request to conduct a review of the railroad's actions. As such the petition should be dismissed.

(2) Petitioner's references to "new territory" and "another territory" are incorrect assumptions, not issues of law and if relevant are issues that would require submission of evidence.

(3) It is UP's position that the issue of law involved in this case is whether Mr. C. L. Daniels possessed the necessary skills to be certified as an engineer in accordance with 49 CFR Part 240.213 and 49 CFR Part 240.127.

(4) A secondary issue of law is whether 49 CFR 240.307 applies only to those items in parts 240.117 and 240.119 (see 240.307 (b)(5)) or to all cases in which an employee does not possess the skill required to be a certified engineer.

(5) Hearing Petitioner made no attempt to rebut or explain the adverse information that formed the basis of his denial of certificate as provided in 49 CFR 240.219(c).

II. **ISSUES OF FACT:** (1) It is UP's position that references to reviewing Union Pacific's decision in the Petitioner's Issues requiring the submission of evidence is improper as it seeks to review the Carrier's decision. As stated above that is improper in a de novo hearing and cause for dismissal of the petition.

(2) References to prior certification "on or before February 3, 2000" is too broad and vague and not germane to the skills required to possess a certificate on February 3, 2000.

(3) Hearing Petitioner's Issue no. 1, 2. Referencing "new territory" is an improper and incorrect assumption. The Petitioner is attempting to establish incorrect and misleading facts through a statement of issue.

(4) Hearing Petitioner's skills evaluations that led to the Carrier's denial of certificate will require the submission of evidence.

III. **OBJECTIONS:** (1) UP objects to the request to vacate the "decision to decertify." The regulations only refer to "Denial of Certification" (49 CFR 240.219) and "Revocation of certification" (49 CFR 240.307). Petitioner is attempting to carve out a new category of decertification. Since Mr. Daniels did not hold a certificate for either a train service engineer (49 CFR 240.107(b)(1)) or a locomotive servicing engineer (49 CFR 240.107(b)(2)) at the time of the denial of certification, the Hearing Officer cannot issue a decision that grants certification to Mr. Daniels.

Respectfully Submitted


W. Scott Hinckley
General Director
Union Pacific Railroad

Dated: September 17, 2001

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document has been served via U.S. mail, postage prepaid, this 17th day of September, 2001, to all parties named below:

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