APPEAL OF REVOCATION

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| Petitioner Information | | | | | | | | | | | | |
| Full Name: | | |  | | | | | |  | | |  |
| Last | | | | | | | | | First | | | Middle |
| Address: |  | | | | | | | | | | |  |
|  | | Street Address | | | | | | | | | | Apartment/Unit # |
|  |  | | | | | | | | |  | |  |
|  | | City | | | | | | | | State | | ZIP Code |
| Daytime Phone: | | | | ( ) | | Email Address: | |  | | | | |
| Position on Crew: | | | | |  | | | | | | | |
|  | | | | | | | | | | | | |
| Railroad Information | | | | | | | | | | | | |
| Railroad Name: | | | Union Pacific Railroad | | | | | |  | | |  |
|  | | | | | | | | |  | | |  |
| Address: | 1400 Douglas Street | | | | | | | | | | |  |
|  | | Street Address | | | | | | | | | | Apartment/Unit # |
|  | Omaha | | | | | | | | | NE | | 68179 |
|  | | City | | | | | | | | State | | ZIP Code |
| STATEMENT OF CLAIM:   * Include the "remedial action" sought, i.e. the restoration of the conductor certificate. Show the dates suspended or revoked. | | | | | | | | | | | | |
| That the board rules that Union Pacific Railroad's decision to revoke Petitioner's certification from June 06, 2013 , to 0001 hours on July 06, 2013 was improper. | | | | | | | | | | | | |
| That the Board order Union Pacific Railroad to revise its records to reflect the Board's decision of improper revocation of certification. | | | | | | | | | | | | |
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| STATEMENT OF FACTS:   * Should include dates, trains, locations, and facts surrounding   the incident | | | | | | | | | | | | |
| On 06/06/2013 Foreman J. R. Doe (Union Pacific Witness) was working the Y35-R yard job on the North end of Yard 3 in the Jefferson Yard. | | | | | | | | | | | | |
| At approximately 2100 hrs, Foreman Doe received radio communication from the Helper on the Y35-R that he needed to come examine a switch. The Helper indicated that he was unable to line the switch controlling movement between 49 and 50 tracks.. | | | | | | | | | | | | |
| Foreman Doe noticed that, while the bridal bar wasn't bent, the points did appear to be somewhat spread. The condition of the 49/50 switch was then reported to the yardmaster, who, in turn, reported the condition to MYO Jones. MYO Jones then investigated the incident with SMTO Smith*.* | | | | | | | | | | | | |
| MYO Jones made the determination that Petitioner's crew, working the ZYZR2-03 had ran through the switch at around 1048 hrs on the date in question. | | | | | | | | | | | | |
| After the on-property investigatory hearing, Union Pacific sustained the charge that Petitioner:  *...failed to line the train out of Track 49 properly after making your set out. This resulted in a run through switch...in violation of Rule 8.2, as contained in the General Code of Operating Rules, effective April 7, 2010, Safety Rules, effective July 30, 2007, and in the System Special Instructions, effective April 7, 2010.* Additionally, this level discipline results in the loss of your qualification for the position of Freight Conductor, as specified by the Federal Railroad Administration in 49 CFR Part 242. This decision is based on violations listed above as they relate to 49 CFR 242. Therefore, your FRA License  Revocation began on June 06, 2013 , and will conclude at 0001 hours on July 06, 2013. | | | | | | | | | | | | |
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| EMPLOYEES POSITION:   * Include all points which support the employee. | | | | | | | | | | | | |
| * In the instant case, Union Pacific erred procedurally by failure to issue a charge letter (UP Exhibit 1) with specific charges against Petitioner. Instead, Union Pacific chose to charge Petitioner with, "any applicable rules that may be brought up during the course of the investigation". A blanket charge of the literally thousands of rules as contained in Union Pacific’s general and wide-ranging charge statement does not fulfill the requirement of the controlling discipline agreement that Petitioner receive a charge letter containing the specific rules charged against him. * As a result, Petitioner suffered substantial harm in not being able to adequately prepare for the investigatory hearing. | | | | | | | | | | | | |
| * Union Pacific Railroad presented no credible evidence, that #1 the switch was even ran through, and not just out of alignment, and #2 that Petitioner was in any way responsible for the malfunctioning switch | | | | | | | | | | | | |
| * When questioned as to whether or not the switch bar was bent on the switch in question, SMTO Smith, knowing that this is the surest indication of a switch having been ran through, responded on page 42 that the bridal bar *was* bent. * MYO Jones, the actual investigating manager, and original charging manager for this alleged incident, responded that the switch bar was *not* bent, when asked the same question on page 93 of the investigatory transcript. * Union Pacific Witness, Foreman Doe, expressed his bewilderment as to why the switch bar was not bent and why there was not any damage to the switch post where the bar attaches to the switch post-only gapped switch points.. * Further evidence of inconsistencies in Charging Manager Smith's testimony can be found by a comparison of pages 30-31, and page35 of the investigatory transcript. Initially Manager Smith is asked, "And you can say *without* certainty that based upon your examination of the switch, the switch was ran and it was ran on the move coming out of track 49"? His answer on page 31, "That is correct". A short period later when asked nearly the same question on page 35, Manager Smith responds that he is certain that the switch was ran through by Petitioner's crew making their move out of Track 49 * Also, on page 41 of the record, SMTO Smith clearly states that, upon arrival at the scene by Himself, and Investigating Manager Jones the 49/50 Switch was lined against the move Petitioner's crew had made and was gapped. This is in direct conflict with Union Pacific Witness Doe's testimony, the crew that had actually reported and discovered the malfunctioning switch, who, on page 75 of the record, testified that his crew had left the handle in a neutral/floating position, not lined for either track. * Such inconsistencies in testimony leads the reasonable observer to the conclusion that SMTO Smith's testimony is unreliable, and without merit. | | | | | | | | | | | | |
| * Union Pacific then produced photographic evidence as contained in exhibits UP7- UP 11. These exhibits are supposedly photographs of the switch in question (Track 49/50 switch) and supposedly show some type of damage to the switch. First and foremost, there is no evidence identifying which switch this actually is, or if it is even on the Union Pacific Railroads property. And, second, it is entirely indiscernible whether or not there is any damage at all to the switch, or switches, in the photographs. Even the photo in the exhibit which may possibly show a gap on each side of the points, fails to capture the switch handle position to demonstrate that the handle is not merely in a neutral position, which would create the same effect on any properly functioning switch. | | | | | | | | | | | | |
| * In addition to Union Pacific's complete lack of credible evidence and testimony against Petitioner, it is disturbing that the only reliable evidence that Union Pacific could have easily obtained, the event recorder and Track Image Recorder downloads, were intentionally omitted by Union Pacific. On page 105, Manager Jones plainly states that the download would have clearly proven important details as to speeds, times, etc., but that he did not obtain it. Also, on page 133, Mr. Jones states that he does not see how the TIR image/video of the incident would have pertained to the investigation, as he already appeared to have decided that Petitioner's crew must be at fault-although he seemed unable to produce any credible evidence to support such an assumption. | | | | | | | | | | |  | |
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| SUMMARY:   * Restate briefly the claim, and close. | | | | | | | | | | | | |
| Petitioner is an employee in good-standing with a clean 32 year record. Petitioner received substantial harm from Union Pacific's improper and unwarranted manufacture of charges in this matter. The Petitioner requests that the board rules that Union Pacific Railroad's decision to revoke Petitioner's certification was improper, and that the Board order Union Pacific Railroad revise its records to reflect the Board's decision of improper revocation of certification. | | | | | | | | | | | | |
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**Attachments:**

* **All pertinent written documents including but not limited to:**
  + **Notice of Certificate Suspension.**
  + **Notice of Certificate Revocation (Final Determination).**
  + **Notice of Discipline Assessed.**

* **Complete transcript of railroad certification hearing with all exhibits.**