

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26574
Docket Number MW-27104

Elmer F. Thias, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(~~Missouri-Kansas-Texas~~ Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The discipline imposed upon Track Inspector G. W. Carver for alleged failure to properly inspect track or take corrective actions on November 6, 1984, was on the basis of unproven charges and on the basis of a hearing that was neither fair or impartial (System File O-246/2579).

(2) The claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: This dispute involves discipline imposed by the Carrier on the Claimant, a Track Inspector, consisting of five working days' actual suspension and five days' deferred suspension, the latter to extend over a period of one year. This discipline followed a Hearing on December 18, 1984, and a finding by the Carrier that the Claimant **was** guilty of certain Rule violations by reason of a failure to properly inspect certain track or take corrective measures required on November 6, 1984. The dispute has been handled on the property, has been appealed to this Board and is properly before us.

Track was inspected by an Assistant Roadmaster and the Claimant while riding in a hi-rail vehicle. The vehicle was operated by the Assistant Roadmaster and he was the Claimant's immediate Supervisor. The Assistant Roadmaster sat directly above the so-called bluff rail while the Claimant sat over the so-called river rail. On November 6, 1984, track **was** inspected between Mile Post 125 and Mile Post 26.9.

The parties are in sharp disagreement over whether the Claimant's responsibility for inspection is confined to the rail over which he rode, namely, the river rail, or whether his responsibility includes the bluff rail. The Organization maintains that it has been the custom and practice on the property for the operator and passenger to be responsible for visual inspection of the rail directly in front of and directly under them. Such evidence as is contained in the record supports the view taken by the Organization. On the other hand, the Carrier's position is that because an employe has some special duty or function, he is not excused or exempt from any or all other responsibility. We assume the Carrier's position is derived from three quoted paragraphs of Rule 88 which explain how inspections of track and roadway are to be made but does not mention special duty or function. The work performed by the Assistant Roadmaster and the Claimant on November 6, 1984, was the basic purpose of their positions and they had regularly performed it, in the manner they did, for several years. This dispute does not involve a special duty or function.

We see the dispute over the Claimant's scope of responsibility to be secondary **and** one we need not decide. The issue before us is whether the discipline imposed on the Claimant is supported by sufficient evidence and we find that it is not.

Briefly stated, the sequence of events here is that the Claimant and his Supervisor left Mile Post 125 in the morning with the Claimant sitting directly over the river rail and the Assistant Roadmaster sitting directly over the bluff rail. They traveled north, passed by Mile Post 114.5 and did not report a serious defect in the bluff rail at that location. They continued north and met and passed a Carrier Assistant Vice-President and a Division Engineer who were traveling south. The location of this meeting is not indicated in the record but it is clear that they were north of Mile Post 114.5. After passing by the two Carrier officials, the Claimant and his Supervisor continued north and tied up for the day at Mile Post 26.9.

The record does not indicate the origin from which the two Carrier officials began their travel but it is clear that while heading south, they met and passed the Claimant and his Supervisor. The Carrier officials continued south until they arrived at Mile Post 114.5. There they discovered two broken compromise joint bars, a two-inch separation in the bluff rail and the northern end of that rail, which extended south, raised approximately one and one-half inches above the south end of the rail extending north. **Consequently,** the two officials contacted a Section Foreman at Tebbetts and instructed him to make necessary repairs to the bluff rail at Mile Post 114.5. The Section Foreman complied with the instruction given to him and made appropriate repairs.

The Section Foreman was called to testify during the Hearing held on December 18, 1984. The Section Foreman gave extensive testimony of the condition of the two rails at Mile Post 114.5. His testimony and answer to one question put to him by the Conducting Officer is quite pertinent. The Section Foreman was asked if trains had passed over the joint after the bar had broke. His answer was that the rail ends were not battered.

The presentations which both parties have made in this dispute indicate the serious consequences which may occur if a Carrier's track is not properly inspected and properly maintained. Thirteen main line derailments on the Carrier's St. Louis Subdivision are serious indeed. Both parties recognize that the lives of the train crews may be at stake in a derailment and that is recognized by this Board as well. Consequently, we see the necessity of the Carrier's investigation to develop what brought about the defects in the rail at Mile Post 114.5.

Upon review and consideration of the record, we find that the evidence contained therein is not sufficient to support the discipline imposed upon the Claimant.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

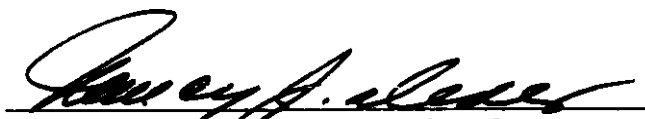
That the Agreement was violated.

A W A R D

claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1987.