

The Third Division consisted of the regular members and in addition Referee Peter R. **Meyers** when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employes**  
(Consolidated Rail Corporation)

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

(1) The 10 days of suspension imposed upon Track Foreman **J. W. Doerr** for alleged 'Failure to initiate **immediate** remedial action . . . at M.P. 38.1 . . . on February 10, 1984 . . . which resulted in the derailment of **Train** WPCA-30 . . . on February 12, 1984' was without just and sufficient cause and on the basis of unproven charges (System Docket CR-799-D).

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

FINDINGS:

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

The carrier **or** carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction **over** the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant is employed as a track foreman. On February 10, 1984, Claimant and his two-man crew were assigned to replace ties on the Cape May Secondary Track at Richland, New Jersey. On February 12, 1984, a derailment occurred at M.P. 38.1 of the track. Claimant subsequently was instructed to attend a formal investigation in connection with the following charge:

"Failure to initiate immediate remedial action on the deteriorated tie condition in the middle of the curve at M.P. 38.1, Cape May Secondary, on February 10, 1984 after walking the entire curve, which resulted in the derailment of Train WPCA-30 at 4:10 P.M. on February 12, 1984."

The hearing was held as scheduled, and as a result, Claimant was assessed a ten-day suspension. The Organization thereafter filed a claim on Claimant's behalf, challenging the suspension.

This Board has reviewed the evidence and testimony in this case, and we find that there is insufficient evidence in the record to support the guilty finding. Therefore, the claim must be sustained.

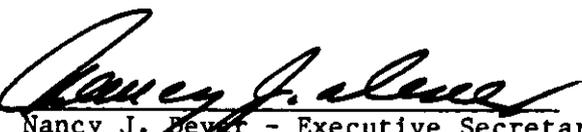
The Carrier has failed to show that the Claimant did not initiate proper remedial action with respect to ties at M.P. 38.1. The Claimant's Supervisor testified that the Claimant had discretion to determine which ties should be replaced; moreover, there were more deteriorated ties needing replacement than Claimant possibly could replace, given the size of his crew and the amount of the material available. The Carrier's Assistant Division Engineer concluded that the train derailed because of deteriorated ties; the Carrier, however, established no connection between the deteriorated ties and the Claimant's work on the day in question. Therefore, there is no probative evidence that the derailment occurred because of the Claimant's alleged negligence.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1988.