

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(CSX Transportation, Inc. (formerly The Chesapeake  
( and Ohio Railway Company)

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

(1) The disqualification of Track Inspector J. D. Conley for alleged '... responsibility in connection with ... derailment ... at ... Lemoyne, Ohio....' on February 16, 1989, was arbitrary, without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement [System File C-D-4634/12(89-352) COS].

(2) As a consequence of the violation referred to in Part (1) hereof, the Claimant's record shall be cleared of the charge leveled against him, his seniority as a track inspector shall be restored unimpaired and he shall be paid the difference in his track inspector rate of pay and the rate of the positions which he has worked since his disqualification."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

Prior to his disqualification Claimant was a Track Inspector with an assigned territory between Mileposts 31 and 114 on Carrier's Columbus Subdivision. At approximately 6:00 AM of February 16, 1989, a derailment occurred at Milepost 111.4. Subsequent Investigation by a three member committee, composed of Supervisors from the Mechanical, Transportation and Engineering Departments, determined that a contributor of the derailment was wide track gauge caused by loose or missing spikes. On the basis of the opinion expressed by the committee Claimant was cited for Investigation and:

"...charged with responsibility in connection with a mainline derailment on the Columbus Subdivision at MP 111.4, Lemoyne, Ohio at or about 6:00 a.m. February 16, 1989."

Following the conclusion of the Investigation Claimant was disqualified as a Track Inspector.

Study of the Investigation transcript discloses that the evidence and testimony connecting Claimant with responsibility for the derailment is speculative and circumstantial. While in many situations speculative and circumstantial evidence may properly be used to establish guilt of a charge of misconduct or failure to properly perform a task (and in some situations it may be the only evidence used and still be adequate) in this case it is inadequate because of the host of other speculative and circumstantial evidence which suggests that other factors may also have contributed to the derailment and perhaps were the real cause.

When dealing with circumstantial and/or speculative evidence Carrier is required to make a causal connection between such evidence, the incident involved and a charged employees responsibility. These connections are missing here. Carrier has simply attempted to show that a contributor to the derailment was a wide gauge and it was Claimant's responsibility to detect and correct the problem. However, it has not been adequately established that this was the condition before the incident or that Claimant was somehow lax in the performance of his job. Moreover, as argued by the Organization, the wide gauge at the crossover may just as well have been cause by the train itself passing through. For example, the Organization requested tapes of the speed the train was operating when passing through the crossover. These were not supplied by Carrier. Also, the Organization noted that the locomotive immediately ahead of the first car derailed has a history of pushing the rail out when entering a crossover.

These and other possibilities (raised and unanswered in this record) leaves the case against Claimant as mere inconclusive suspicion. Inconclusive suspicion is inadequate to support discipline of disqualification.

The Claim will be sustained as presented.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1992.

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Serial No. 351

INTERPRETATION NO. 1 TO AWARD NO. 29122

DOCKET NO. MW-29216

NAME OF ORGANIZATION: (Brotherhood of Maintenance of Way Employees

NAME OF CARRIER: (CSX Transportation, Inc. (former Chesapeake  
( and Ohio Railway Company)

The Organization has requested an interpretation with respect to the Award in this matter. It notes that Carrier contends that to comply with the Award all that is necessary is that Claimant be allowed the difference between the compensation he received during the period of time covered by the claim and the compensation received by the occupant of the Track Inspector's position he would have worked in that period. The Organization notes that the Statement of Claim was for the difference between the rates of pay of the position Claimant worked and the rate of pay of the Track Inspector's position.

The Claim that the Organization presented to this Division asked that Claimant be:

"...paid the difference in his track inspector rate of pay and the rate of the positions which he has worked since his disqualification."

That Claim was sustained as presented. Claimant is entitled to be paid the difference between the Track Inspector rate and the rate of the position worked for each date compensation is credited during the period of time covered by the statement of Claim.

Referee John C. Fletcher who sat with the Division as a neutral member when Award 29122 was adopted, also participated with the Division in making this Interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Linda Woods  
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois this 8th day of June 1994.