

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29607  
Docket No. MW-29981  
93-3-91-3-377

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

(Brotherhood of Maintenance  
of Way Employees  
PARTIES TO DISPUTE: (  
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The twenty (20) demerits and ten (10) demerits assessed Track Foreman R. W. Warren and Crane Operator H. H. Taber, respectively, was without just and sufficient cause and on the basis of an unproven charge (System File DG-559-90/TM-23-90).

(2) Track Foreman R. W. Warren and Crane Operator H. H. Taber shall have the demerit marks removed from their respective records."

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 Warren, has been a Carrier employee since May, 1964, and, Claimant Taber, since August, 1962. Both have established and hold seniority within the Track Subdepartment, and were working in the positions of Track Foreman and Crane Operator, respectively, at the time of this incident.

On March 1, 1990, Warren and his gang were repairing track defects at the Carrier's Island Yard at Buffington, Indiana where the Carrier interchanges with the IHB Railroad and delivers to Inland Steel Company in their respective yards. The northern four tracks, Inland Yard, are the delivery and receiving tracks between the Carrier and Inland Steel Co., which is owned and maintained by the Carrier. This yard is located next to Lake Michigan and consists of four tracks running in an east-west direction, numbered south to north 1-4. Track No. 4 is next to the lake. The tracks located south of Inland Yard are IHB interchange tracks which are owned and maintained by the IHB Railroad.

At approximately 1:30 P.M., Warren radioed the Acting Track Supervisor and requested that he come to Inland Yard to look at a switch. The Track Supervisor explained that he was investigating a derailment and was unable to leave the yard. Warren then radioed Taber to come to Inland Yard to help him with necessary track repair work. Warren requested that Crane "help realign a turnout for Tracks 3 and 4 at the east end of Inland Yard." Crane, who at that time was operating payloader No. 321, completed his task and arrived to assist Warren at approximately 1:30 P.M.

Subsequent to his arrival, Taber radioed the Track Supervisor, again requesting that he come to the Inland Yard. Taber reported that while attempting to move a frog he had "turned over" about ten (10) lengths of rail. When he arrived at the yard, the Track Supervisor found nine (9) rails turned on the north rail at the east end of Track No. 1 and two rails turned on the south rail at the east end of Track No. 2.

Claimants offered the following explanation to the Track Supervisor: Utilizing the payloader, Claimants attempted to realign the turnout for tracks 3 and 4 by pushing the frog in a northward direction. Instead, however, the aforementioned 11 rail sections on tracks 1 and 2 overturned. Tracks 1 and 2 were subsequently out of service for one day. Further, a "kink" was put into the rail behind the frog which was being adjusted, requiring tracks 3 and 4 to be out of service for approximately two hours.

On March 21, 1990, the Carrier charged the Claimants as follows:

"Negligence in the performance of your duties at about 1:00 P.M., March 1, 1990, in connection with track damage at Nos. 1 and 2 Inland Yard wherein 11 rails were turned."

A hearing was held on April 5, 1990, at which time the Hearing Officer determined that there was sufficient evidence to find Claimants guilty of "negligence in the performance of their duties," assessing Warren 20 demerits and Taber 10 demerits.

For its part, the Organization maintains that the Carrier failed to "properly apprise the Claimants of the precise charge against them, and are in violation of the current Agreement." Further, the Organization emphasized that Claimant Taber was merely "following Foreman Warren's instructions" and should not be held accountable for his part in the dispute. Finally, the Organization asserts that "the Carrier failed to demonstrate that the Claimants did not use reasonable judgement in their actions on the date and time in question, and the fact that an accident occurred in no way proves they were at fault."

The Carrier asserts that the Claimants have attempted to minimize their negligence, and points to the following exchange between the General Chairman and the Track Supervisor:

"KLD: Mr. Flatter, is it true you have charged employee with negligence based on excessive amount of damage plus employees statements, and speculation of acting recklessly?

REF: I had the charge of negligence brought up based primarily on their experience, Harry as a payloador operator and Ron as a foreman. In their past having relined and moved switches before, and also as a result of the track damage that occurred.

\* \* \*

KLD: And you have stated that it is a common practice using a payloador to line rail?

REF: We could use the payloador for reasons, the guys could do this with jacks but it takes longer, so yes.

SCC: In your experience operating the 321 payloador have you turned rail with it before?

HMT: No. I have kicked tracks out [out of alignment] and things of that nature but no I have not turned rail."

Further, the Track Supervisor testified that pushing the switch to the north, as Claimants attempted to do, could not correct the switch problem, but would "cosmetically line the frog and make it look nice." Finally, Carrier emphasized that Claimant Warren had failed to inspect the condition of tracks 1 and 2 prior to directing Taber to run over the tracks and operate on top of them, and that Claimant Taber, an experienced crane operator, "never questioned the directive issued by the Foreman and failed to inspect tracks 1 and 2 prior to driving over and operating on top of them."


We find no evidence on the record to support the Organization's claim that the charges leveled against Claimants were overly vague. It is apparent from the transcript of the Investigation that the charges were sufficiently specific for the Claimants to mount an informed defense to those charges.

Based upon a careful review of the evidence before us, we concur with Carrier's conclusion that Claimants' negligence precipitated the accident on March 1, 1990. Claimants possess over 50 years of combined experience, and neither chose to exercise caution when attempting to repair the track at Inland Yard. Further, neither has pleaded ignorance of the proper procedure Third Division Award 28479. Finally, in view of Claimant Warren's status as foreman with that position's attendant responsibilities, we do not find the differential assessment of penalties to be inappropriate.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.