

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21101

Docket Number MW-21168

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Chicago and North Western Transportation Company

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

(1) The discipline of Track Supervisors R. W. Wilkinson and A. F. Barrios for alleged "failure to make switch inspection and take necessary corrective action on East Switch of renovating plant Yard 5 Proviso" was improper, without just and sufficient cause and on the basis of unproven charges (System Files D-11-17-80 and D-11-17-81).

(2) Mr. R. W. Wilkinson be allowed one hundred twenty (120) hours of pay at the track supervisor's straight-time rate and the charges against Messrs. R. W. Wilkinson and A. F. Barrios be stricken from their respective records in accordance with Rule 22(e).

OPINION OF BOARD: The Claimants, Track Supervisors Wilkinson and Barrios, were charged with failure to make inspection of and to repair defects in the East Switch of the Renovation Plant Yard 5, Proviso Yard. The charge alleged that such failure of inspection and resulting defects caused the derailment of four cars and damage to a jet snow blower on April 4, 1974. After hearing, Track Supervisor Wilkinson was disciplined by five days actual suspension which triggered a previous ten day deferred suspension, for a total actual suspension of fifteen days. Track Supervisor Barrios was disciplined by a ten day deferred suspension.

The discipline is appealed on the ground that the Carrier assigned the Supervisors so many other duties that they were prevented from making the switch inspections in accord with the accepted pattern of inspections, and that, consequently, the Supervisors should be exonerated from responsibility for not finding and repairing the defects in the East Switch.

The hearing record reflects that, although the East Switch should have been inspected twice a week, the inspection reports showed that the last inspections of the switch prior to the derailment on April 4 were made on March 8 and 21, 1974. Track Supervisor Wilkinson stated at the hearing that:

"... the switch should be inspected twice a week but we've been having a lot of trouble getting on the track; plus quite a few derailments that we work on."

Supervisor Wilkinson's answers in the following hearing testimony are also pertinent:

"Q. From March the eighth until April the fourth, were you inspecting track at other places?

A. I make inspections yes, other places-main line and then I do other duties; working on derailments and different other jobs.

Q. Does other work ever interfere with your track inspection?

A. Yes sir. It does. Also getting on the tracks is one of the biggest problems in the yard."

Supervisor Barrios concurred with Supervisor Wilkinson's statements. The record also reflects that the switch was located about fifty (50) feet from the building where the Track Supervisors go on duty each morning.

It is clearly established by the foregoing, and the whole record, that the East Switch was not inspected between March 21, 1974 and the derailment incident on April 4, 1974. The switch, which should have been inspected twice a week, thus went without inspection for a period of fourteen (14) days. The Track Supervisors' explanation that other work prevented inspection of the East Switch is somewhat questionable. Track Supervisor Wilkinson's explanation for the fourteen (14) day lapse in inspection of the East Switch (endorsed by Supervisor Barrios) was highly generalized, and while he implied that other work prevented inspection of the East Switch, he did not make this statement categorically. In any event, even when credibility and weight is given to the defense of overburden from other work, the proximity of the East Switch to the Supervisors' reporting point must be considered. And since the East Switch was approximately fifty (50) feet from their morning on-duty point, the Supervisors should have been able to provide more inspection attention to the East Switch, as well as to others in that immediate vicinity, during the period from March 21 to April 4, 1974. The record thus contains substantial evidence to support discipline for their failure to carry out their inspection duties more effectively, and in the circumstances the quantum of discipline cannot be said to be unduly severe. Accordingly, the claim will be denied.

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;

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

The Agreement was not violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: G.W. Parker
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1976.