

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25660

Docket Number MW-25852

Hyman Cohen, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(The Washington Terminal Company

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

(1) The Carrier, without just and sufficient cause, improperly disqualified Mr. G. E. Thompson as Track Foreman and Assistant Track Foreman for alleged "Failure to properly perform your duties as Assistant Foreman in that on April 11, 1983, you certified with your signature on the 'Switch Inspection and Test Report' Form M.W. 14 that Point B of Switch No. 23 was 'Good' and took no exception to the worn condition. \*\*\* This worn condition of Point B of Switch No. 23 caused the derailment of Car No. 3113 of Train 81 at 1:55 p.m., on April 24, 1983."

(2) The Carrier, without just and sufficient cause, improperly disciplined Mr. G. E. Thompson for alleged "Failure to properly perform your duties as Assistant Foreman in that on May 18, 1983, you certified with your signature on the 'Switch Inspection and Test Report' Form M.W. 14 that Point A of Switch No. 472 was 'Fair' and took no exception to the worn condition. \*\*\* This worn condition of Point A of Switch No. 472 caused the derailment of W. T. Diesel 46, at 5:35 p.m., on June 1, 1983."

(3) The claimant's record shall be cleared of the charges leveled against him, his seniority as track foreman and assistant track foreman shall be restored and unimpaired and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: The Claimant has been employed by the Carrier as a Track Foreman and Assistant Track Foreman. He has been in the service of the Carrier for eleven (11) years. Two hearings were held on July 27, 1983 involving the Claimant. Following the first hearing, the Claimant was disqualified as a Track Foreman and Assistant Track Foreman for failing to properly report the worn condition of Point B of Switch No. 23 on April 11, 1983 which caused the derailment of Car No. 3113 of Train 81 on April 24, 1983. As a result of the second hearing held on July 27, 1983, the Claimant was again disqualified as a Track Foreman and Assistant Track Foreman and was also suspended for five (5) days for failing to properly report the worn condition of Point A of Switch No. 472 on May 18, 1983 which caused the derailment of W. T. Diesel 46 on June 1, 1983.

Incident of April 11, 1983

It was the Claimant's position that the switch point was "fair" and he reported Point B of Switch No. 23 as fair to a "Mr. Sims" who was to record such evaluation on the Carrier's "Switch Inspection and Test Report". According to the Claimant the recorder made the mistake of writing that Point B of the switch was good. The Claimant further indicated that the recorder did not correct the "mistake"; nor did he notify him of the "mistake".

The Board cannot accept the position of the Claimant. The Claimant signed the "Switch Inspection and Test Report" on April 11, 1983, thus certifying that the information set forth on the Report was correct. The Carrier must rely on the person conducting the inspection who also signs the Inspection Report. The Claimant cannot relieve himself from the responsibility of the switch inspection by blaming the recorder for improperly transmitting information onto an Inspection Report, which he signs. Moreover, following the derailment the switch point was inspected by Track Supervisor Lang and Terminal Engineer Kulick and they found the switch point to be worn in "excess of 7/8" which is in violation of the Carrier's requirements. After carefully examining the evidence, the Board concludes that there is probative evidence to conclude that the Claimant was derelict in the performance of his duties.

Incident of May 18, 1983

The Claimant reported Point A of Switch No. 472 to be in "fair" condition after his inspection on May 18, 1983. However, the record discloses that the switch point in question was worn 1-1/8 inches below the top of the stock rail. The maximum allowable wear of the switch point under the Carrier's requirements is 7/8 of an inch. Accordingly, in light of the wear required, the switch point was in poor condition.

It is true that the derailment occurred on June 1, 1983, which was two (2) weeks after the inspection of the switch point. It is claimed by the Organization that the charge against the Claimant is unfounded and without merit. However, in light of the wear involved and the amount of traffic at the location in question, the Board concludes that the switch point could not have gone from an allowable condition to a poor condition. Thus, there is substantial evidence in the record to warrant the conclusion that the Claimant failed to properly exercise his duties on May 18, 1983.

Turning to the penalty assessed, it should be noted that Claimant has been in the service of the Carrier for eleven (11) years. It is the Board's judgment that the disqualification of the Claimant as Track Foreman and Assistant Track Foreman is excessive. The Claimant's seniority as Track Foreman and Assistant Track Foreman is to be reinstated. No compensation is to be paid to the Claimant. However, the Claimant should be aware that the continued dereliction of duties cannot be tolerated by the Carrier.

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

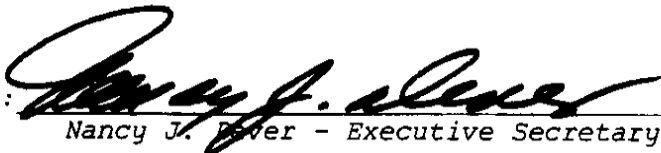
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Pever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1985.