

## NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award No. 29813

Docket No. MW-30721

93-3-92-3-511

The Third Division consisted of the regular members and in addition Referee Robert G. Richter when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(CSX Transportation, Inc. (former Louisville  
(and Nashville Railroad Company)

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

- (1) The disciplinary disqualification for six (6) months of Track Foreman F. W. Rich, for alleged responsibility for the derailment of Train S534-03 at or near Mile Post 83.4 on the Main Line Sub-division, damages sustained to equipment and track resulting therefrom on June 5, 1991 and for alleged violation of CSX Transportation Procedures Manual Rule 704 for allegedly fouling track with a track jack without written authority of the train dispatcher, was without just and sufficient cause and on the basis of unproven charges [System File 6(25) (91)/12 (91-1008) LNR].
- (2) The Claimant's record shall be cleared of this incident and he shall be paid for any time lost."

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 employe 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 were given due notice of hearing thereon.

Claimant, with over 25 years of unblemished service, was assigned as a Track Foreman on June 5, 1991. A train derailed 35 cars near where Claimant and his gang were working. On June 10, 1991, Claimant was requested to attend an Investigation on June 13, 1991, wherein he was:

"...charged with responsibility in connection with derailment and damages sustained to equipment and track, resulting from the derailment of S534-03, on Mainline Subdivision, at or near MP 83.4, at or about 1250 hours, on June 5, 1991."

The Investigation was held as scheduled. Thereafter, Claimant was found responsible for the derailment and was restricted from working as a Foreman for six months.

A review of the transcript shows that at the time of the Investigation, the cause of the derailment had not been determined. The Trainmaster testified as follows:

"Q80: Mr. Eatmon, has the final updated Incident/Accident Report been finalized yet. Has a cause been assigned to the derailment.

A80: No, to my knowledge it has not.

Q81: The final report to your knowledge has it been turned in on the derailment and would include the cause, do you have knowledge of it.

A81: I don't know if the official cause has been reported, or I don't know if the actual report has been made of the official cause yet."

In the letter of discipline dated July 12, 1991, the Division Engineer wrote:

"It has been determined that you had responsibility in connection with derailment and damages sustained to equipment and track resulting from the derailment of S534-03, on the Mainline Subdivision, at or near MP 83.4, at or about 1250 hours, on June 5, 1991. When Train S534-03 derailed at or near MP 83.4 where your gang disturbed the track and you

did not protect the track with a speed restriction as required by Item 7.0, Page 23 of the CSX Transportation Track Foreman's Guide to Preventing Track Buckling. The investigation also revealed that you violated Rule 704, found on Page 83 of the CSX Transportation Procedures Manual, when you fouled the track with a track jack without written authority of the train dispatcher."

The Claimant was charged with his responsibility for the derailment. To this Board, if you do not know the cause of the derailment, it is extremely difficult to assess blame. As far as this Board is concerned, we have no knowledge of the cause.

While it may be true that Claimant violated CSX Rules on the day in question, he was not charged with violating Rules. Had the Investigation developed that these Rule violations were the cause of the derailment the discipline would have been proper, in fact lenient. This was not done. We will sustain the claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Catherine Loughrin  
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 29th day of September 1993.