

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31488
Docket No. MW-31872
96-3-94-3-198

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Of Maintenance Of Way Employes
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(Illinois Central Railroad Company

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

1. The discipline (10 day suspension) imposed upon Track Inspectors S. F. Rudd and J. A. Rogers for alleged '... responsibility, if any, for the derailment of Amtrak Train No. 59 on Tuesday, February 23, 1993 at Memphis, Tennessee between Trigg Avenue and South Yard' was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement. (Carrier's File 209-210 MofW).
2. As a consequence of the violation referred to in Part (1) above, the Claimants S. F. Rudd and J. A. Rogers records shall be cleared of the charges leveled against them and they shall be compensated for all wage loss suffered with all rights unimpaired."

FINDINGS:

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

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

On February 23, 1993, Amtrak Train No. 59 derailed. An Investigation was held on March 17 and on April 6, 1993, Claimants were advised that they had been found guilty of failing to properly perform their jobs and were suspended for ten days.

The cause of the derailment was wide gauge. The FRA report found the gauge to be 59 inches. Claimant Rudd last inspected the track on February 13, 1993, i.e., ten days before the accident. Claimant Rodgers last inspected it on February 20, 1993, i.e. three days before the accident.

The Organization contends that Carrier failed to prove that Claimants were responsible for the accident. The Organization observes that the mere fact that an accident occurred does not establish Claimants' responsibility. In the Organization's view, Carrier did not prove that Claimants could have or should have detected the wide gauge problem.

Carrier argues that it proved Claimants' responsibility. Carrier observes that both Claimants admitted that they did not measure the gauge at the time of their last inspections. Carrier further contends that testimony from its witnesses established that Claimants failed to properly perform their inspection duties.

The mere fact that an accident occurred does not establish Claimants' responsibility. The issue before this Board, thus, is whether there is substantial evidence in the record developed on the property that supports Carrier's findings that Claimants failed to perform their job responsibilities. In other words, this Board must determine whether there is substantial evidence that Claimants should have detected the wide gauge at the times they last inspected the track in issue.

Although it is true, as Carrier argues, that Claimants did not measure the gauge, we are unable to find that such failure amounted to a neglect of Claimants' job responsibilities. Both the Track Superintendent and the Engineering Superintendent testified that wide gauge can be detected through visual inspection. The Track Superintendent indicated that a Track Inspector looks for a dark streak down the bottom of the rail. The Engineering Superintendent testified that the outside of the wheel leaves a grease spot as it starts to ride up the rail where there is wide gauge. There is no evidence in the record that suggests that Claimants should have measured the gauge when they inspected it.

The evidence further established that the wide gauge which caused the accident would have developed over a period of time, at least two to three weeks. However, there is no evidence that any signs of wide gauge were present which the Claimants should have detected. To the contrary, the Claimants testified that they saw no indication of wide gauge at the times of their inspections. The Track Superintendent testified that he inspected the rails two to three weeks previously and saw no indication of wide gauge. The Engineering Superintendent testified that he inspected the location within the prior month and saw no grease spots that would indicate wide gauge. Indeed, the Engineering Superintendent testified, "There are certain tell tale signs [of wide gauge] that were not necessarily present at this one."

We have combed the record thoroughly and have been unable to find substantial evidence that the Claimants should have detected the wide gauge when they conducted their inspections. The essence of Carrier's case is contained in the Engineering Superintendent's testimony. After indicating that tell tale signs of wide gauge were not present, he stated:

"[T]his particular curve is an area that we have had a lot of problems with in the past from gage (sic) and I would like to feel that track inspectors that have an area that is a problem area would pay more attention to it...."

Essentially, the Engineering Superintendent's testimony was that because the accident occurred in a problem area the Claimants should have paid more attention to the track and discovered the problem. There was, however, no testimony as to what specific action Claimants should have taken which could have detected the wide gauge. The Engineering Superintendent's desire to feel that the Claimants would pay more attention to the area is no substitute for such evidence. Speculation and wishful thinking are not proof of a failure to properly perform one's job duties. Because we are unable to find substantial evidence in the record developed on the property, the claim must be sustained.

AWARD

Claim sustained.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of May 1996.