

PUBLIC LAW BOARD NO. 1760

Award No. 31

Docket No. MW-DEC-80-4

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement of Claim 1. Carrier violated the effective agreement when Track Inspector W. E. Pearson was unjustly suspended for three working days without pay on December 6, 7 and 10, 1979.

2. Claimant W. E. Pearson shall be paid at his respective rate for the three days he was held out of service and this investigation shall be removed from his record.

Findings The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated February 2, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, a Foreman - Track Inspector, was advised by his Roadmaster, under date of December 5, 1979, as follows:

"Please refer to my note of instructions to you dated September 20, 1979, copy attached. Also, please refer to copy attached of Track Geometry Car Report made December 4, 1979. The Geometry Car Report showed severe wide gauge in the curve at Attica. The track was slow ordered because of this condition. You did not report to me any gauge problem at this location and you did not properly protect the serious defect with a slow order. You did not take action to have this problem corrected before it became severe. Therefore, you are hereby assessed three (3) days off without pay. The three working days are to be December 6, December 7, and December 10, 1979."

Claimant requested and was granted a formal investigation in connection with this matter. After several postponements it was


finally held on January 15, 1980. As a result thereof Carrier concluded that such suspension be upheld.

The purpose and capability of a Geometry Car is to check the profile, the gauge, the twists and curvature, the surface and alignment, of track concurrently with its movement thereon and produce a graph concurrent with its movement. The track gauge is otherwise checked by a tape measure or a standard track gauge and such check is the specific purpose for the establishment of position of Track Foreman - Inspector.

The Board finds that there was sufficient evidence adduced upon which Carrier based its determination that Claimant was, in fact, guilty of the offense with which charged. Here, the defense offered by the Employees is that there were other employees who could have and should have reported the changed gauge including the Roadmaster and Claimant's replacement while he (Claimant) was off, who failed to report the defective gauge. Such defense must fall. It has been too long held by decisional authority that the failure of one employee to properly discharge his duty does not thereby relieve another employee of his obligation to properly discharge his duty, to necessitate our citing such authority therefor. In the instant case while true that Claimant had been off, sporadically, over a long period of time and true that the Roadmaster had traveled the track and true that Claimant's replacement also had done the same and that neither of such two employees had noted or reported the increased gauge, the fact remains that Claimant, on December 3, 1979, the day before the Geometry Car traversed over the defective track, had placed his motor car on the track at the beginning of the curve at Attica, it is

the gauge of that track which gave rise to the discipline here in dispute. Consequently, Claimant failed to comply with the Roadmaster's instructions, as reflected in the letter of discipline. The discipline was reasonable. In the circumstances this Claim will be denied.

Award      Claim denied.

  
M. C. Christie, Employee Member

  
G. C. Edwards, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member