

PUBLIC LAW BOARD NO. 2535

Joseph Lazar, Referee

AWARD NO. 21

CASE NO. 22

<u>PARTIES</u>	)	BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
<u>TO</u>	)	and
<u>DISPUTE</u>	)	BURLINGTON NORTHERN RAILROAD (Former JTD)

STATEMENT  
OF CLAIM:

1. That the Carrier violated the provisions of the Agreement when it suspended Machine Operator Mr. J. M. Polk for a period of fifteen (15) days commencing July 27, 1985 through August 10, 1985 inclusive. Said action being arbitrary, unjust and based on unproven charges.
2. The Carrier will now be required to compensate Claimant for all wage loss suffered during the suspension and that his record be cleared of all charges.

FINDINGS: By reason of the Memorandum of Agreement signed November 16, 1979, and upon the whole record and all the evidence, the Board finds that the parties herein are employe and Carrier within the meaning of the Railway Labor Act, that it has jurisdiction over the parties and the subject matter, and that the parties and Claimant were given due notice of the hearing held.

Claimant Machine Operator J.M. Polk has been an employee of the Carrier since October 16, 1972. Under date of July 24, 1985, Claimant was notified that:

"As a result of the investigation accorded you on July 2, 1985, you are hereby notified that you are being suspended from the service of the Burlington Northern Railroad Company from 12:01 A.M., July 27, 1985 to 11:59 P.M., August 10, 1985, inclusive, for violation of General Rule D, Rule 12 and Rule 101 of the Burlington Northern Rules of the Maintenance of Way Department in connection

with your failure to properly protect unsafe track conditions at MP 157.6 between Normangee and North Zulch, Texas on the 1st Subdivision, Fort Worth Division, following work at that location by Surfacing Crew on which you were working as Lead Machine Operator on June 20, 1985, and resultant derailment of Train No. 051-19 at that location at about 8:15 A.M. on June 21, 1985, as was disclosed in testimony presented at the investigation."

Rules 12, 101, and General Rule D of the Maintenance of Way Department provide as follows:

PROTECTION FOR SLOW TRACK CONDITIONS

"12. To protect track unsafe for authorized speed, a yellow flag or a yellow light must be displayed in both directions to the right of the track as viewed from an approaching train to indicate beginning at a point 2 miles from the yellow signal the train must proceed at a speed of not more than 10 MPH unless a different speed is specified by train order or bulletin.

Torpedoes must be placed 800 feet in advance of the yellow signal for each train, unless a train order or bulletin has been issued covering the slow track conditions.

A green flag or a green light must be displayed to the right of the track as viewed from an approaching train to indicate that the slow track has been passed and authorized speed may be resumed."

MOVEMENT OF TRAINS

"101. Trains and engines must be fully protected against any known condition which interferes with their safe passage at normal speed."

GENERAL RULES

"D. Accidents, injuries, defects in track, bridges, signals, or any unusual conditions which may affect the safe operation of the railroad, must be reported by the quickest available means of communication to the proper authority, and must be confirmed by wire or on required form."

On the morning of June 21, 1985, at 8:15 a.m., eighteen cars of Train 051 derailed at M.P. 157.6. The Assistant Supt. of Roadway Maintenance, Mr. R. G. Strong, testified as to site inspection:

- "Q. What did you and/or the others establish as a cause for this derailment?  
A. The ballast section of the railroad was not sufficient enough to hold the track without slow ordering it.

Q. In terms of what happened to the train, then, what does this mean? Do you mean to say that the train moved underneath, or the track moved underneath the train then as it proceeded over this location?

A. Yes, sir.

Q. Was the derailment of the train at the head end of the train?

A. No, it was more toward the middle of the train.

Q. What things did you observe at the derailment site which lead to a conclusion such as you have just stated about the cause related to insufficient ballast?

A. Well, the cribs didn't have sufficient ballast in them and there was about three to four inches of dirt on the end of the ties.

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Q. At the location of Mile Post 157.6 where the derailment occurred how much ballast did you say was on the track?

A. At the point of derailment there was between three and four inches of dirt, there wasn't any rock, it was dirt, and this was in several locations.

Q. When you say three to four inches of dirt, do you mean between the rails in the crib of the track?

A. No, sir, at the end of the ties." (Tr, pp. 44, 45).

Claimant testified regarding his placing of speed restrictions to cover the movement of Train X-78 during his tour of duty on June 20, 1985, at approximately 9:00 a.m., and his placing of no other speed restrictions on the segment of trackage at Mile Post 157.6:

"Q. Did you place a speed restriction on the location at Mile Post 156.7 at which you state the ballast section was this way?

A. Yes, sir.

Q. Did you let that speed restriction remain on the track?

A. Way it was, there was a train coming. I gave that train permission verbal permission to go across there at twenty-five miles an hour.

Q. Did you have a Form Y train order at this location when you gave such verbal permission?

A. No, sir, I didn't have no Form Y train order, we had TWC's.

PLB 2535

AWARD NO. 21 (p. 4)  
CASE NO. 22

Q. Was the track warrant such that you were able to prevent the train from movement over this track?

A. Yes.

Q. Basically, the track warrant reads the same as a Form Y train order would read?

A. Similar.

Q. Did you ever place a speed restriction on this trackage?

A. No, sir, not after the train run over it." (Tr., p. 84).

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Q. Is there any other procedure available to you besides the train order which would restrict speed for trains at this location?

A. Flags.

Q. Would this mean the placement of track flags in a manner so that the crew was governed solely by them and not train orders?

A. Yes, sir.

Q. Would presence of such flags normally restrict movement at this location to ten miles per hour in the absence of a train order?

A. Yes, sir.

Q. Did you place any such flags in connection with the area where you performed work on June 20?

A. I didn't place no flags." (Tr., p. 86).

Claimant testified to his familiarity with the BN standards relative to the amount of ballast necessary in the ballast section of the track (Tr., p. 94), and testified:

Q. Was the ballast section of track at Mile Post 157.6 adequate on June 20, 1985?

A. Not after I raised it." (Tr., p. 95).

It is undisputed that Claimant had had some prior limited experience as a Track Supervisor and was entrusted with the responsibilities of his foreman who was on vacation. It is also not disputed that the tamperer was out of order and that as there was little or no ballast, the ballast regulator was of little use on June 20. It is clear, nevertheless, that the Claimant understood that the condition of the track at Mile Post 157.6 called for restricted speed, and, in fact, Claimant did restrict the speed of

PLB 2535

AWARD NO. 21 (p. 5)  
CASE NO. 22

Train X-78. There is no dispute that Claimant, even though he was not in the official role of Foreman, was subject to Rules 12, 101, and General Rule D. Granted that hindsight is superior to foresight, it is nevertheless to be expected that an experienced employee, such as Claimant, with direct knowledge of the specific track condition and knowledge of the Rules 12, 101, and General Rule D, would act to restrict the speed of trains going over this trackage.

The Carrier's decision to discipline Claimant was not arbitrary, capricious, made in bad faith, or in violation of due process. The evidence of record supports the discipline.

A W A R D

1. The Carrier is not in violation of the Agreement.
2. The claim is denied.

Joseph Lazar  
JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER

C. F. Foose  
C. F. FOOSE, EMPLOYEE MEMBER

L. Mares  
L. MARES, CARRIER MEMBER

DATED: 12/5/86