

PUBLIC LAW BOARD NO. 4081

PARTIES	CHICAGO AND NORTH WESTERN)	
	TRANSPORTATION COMPANY)	
)	AWARD NO. 37
TO	AND)	
)	CASE NO. 39
	BROTHERHOOD OF LOCOMOTIVE)	
DISPUTE	ENGINEERS)	

STATEMENT OF CLAIM:

The Brotherhood of Locomotive Engineers - Chicago NorthWestern Transportation Company - General Committee of Adjustment requests the Board to allow Engineer M. E. Porter, Central Division (Kansas City District) to be compensated for all time lost and removal of discipline entry from his record as a result of discipline assessed following investigation on the following charge:

'Your responsibility for derailment of CNW 181827 and subsequent damage to CNW 178131 at approximately 3:35 P.M. on Sunday, May 15, 1983 at Kansas City Yard while you were assigned to Yard Job 089.'

Subsequent to the investigation Mr. Porter, Claimant, was aspersed (sic) discipline of thirty (30) days actual suspension by Discipline Notice No. 1786. Claim premised on B.L.E. - C.G.W. Article 37. **Copy of Discipline Notice No. 1786 and BLE/CGW Article 37 attached as Employee's Exhibit A.**

HISTORY OF DISPUTE:

On May 15, 1983 Claimant was working as Engineer on Yard Job 089 at the Carrier's Kansas City Yard. During a switching move at approximately 3:35 p.m.

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Claimant was pulling twenty-three cars when car CNW 181827 (second behind the locomotive) derailed and car CNW 178131 (first behind the locomotive) sustained damage. By letter of May 16, 1983 the Carrier notified Claimant to appear for formal investigation on the charge that he was responsible for the derailment and damage. The investigation was held on June 17, 1983. On June 21, 1983 the Carrier notified Claimant that as a result of the investigation he had been found responsible for the derailment and damage and was assessed 30 days actual suspension effective that date.

The Organization grieved the discipline. The Carrier denied the grievance. The Organization appealed the denial to the highest officer of the Carrier designated to handle such disputes. However, the dispute remains unresolved, and it is before this Board for final and binding determination.

FINDINGS:

The Board upon the whole record and all the evidence finds that the employees and the Carrier are employees and Carrier within the meaning of the Railway Labor Act, as amended, 45 U.S.C. §§151, et seq. The Board also finds it has jurisdiction to decide the dispute in this case. The parties waived hearing.

At the outset, the Organization raises the objection that the Carrier denied Claimant a fair and impartial investigation by failing to call the Helper on Claimant's crew as a witness at the investigation and by denying the Organization's request that the employee be produced as a witness. Under the circumstances of this case we agree.

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The essence of the Carrier's case against Claimant is that he was guilty of improper train handling resulting in excessive slack action which caused the derailment and damage. The Carrier maintains that the slack action ran in toward the locomotive with such force as to cause the wheels on the front truck of the second car from the locomotive to disengage from the rail thus causing the car to derail. While apparently pursuing a theory at the investigation that Claimant backed the engine after the derailment thus causing damage to the first car behind the locomotive, the Carrier in its submission before this Board argues that whether the damage to the car was the result of Claimant backing or resulted from excessive slack action, Claimant is still responsible for that damage.

However, the Foreman on Claimant's crew, who also was charged in connection with the derailment, testified that while he did not see the derailment he was in a position to observe Claimant's handling of the cut of cars prior to and following the derailment. The Foreman testified that there was no excessive slack action at any time material to the derailment and that Claimant's train handling was proper. That testimony materially contradicts the conclusion of the Carrier Officer investigating the accident that excessive slack action caused the derailment and damage to the other car.

The Foreman also testified that the Helper on the crew was positioned some 40 to 50 feet away from him at the switch to the track from which the cut of cars was being pulled and that the Helper was closer to the locomotive. The conclusion is inescapable that the Helper might well have been able to shed light upon the question of slack action.

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Specifically, the testimony of that employee would tend to confirm or contradict the testimony of the Foreman and Claimant. Significantly, we believe, the Helper was not charged and thus would have had less motive than the Foreman to render colored testimony.

As the Organization argues, it is a proposition too well established to require citation to authority that when conducting an investigation a Carrier is obligated to call all witnesses who may shed light upon the events which are the subject of the investigation. The Carrier's failure to do so seriously impacts upon the weight of the record evidence supporting a finding of guilt. It also constitutes denial of a fair and impartial investigation to the accused, particularly where the Carrier denies a request for the production of such a witness. This is precisely what happened in the instant case.

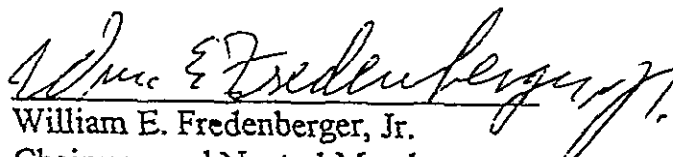
In view of the foregoing we have no choice but to uphold the claim in this case in its entirety.


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AWARD

Claim sustained.

The Carrier will make this award effective within thirty days of the date hereof.


William E. Fredenberger, Jr.
Chairman and Neutral Member


C. R. Wise
Carrier Member


R. D. MacArthur
Employee Member

DATED:

