

PUBLIC LAW BOARD NO. 4104

Case No. 77

PARTIES TO DISPUTE: Brotherhood of Maintenance of
Way Employees
vs.
Burlington Northern Railroad

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

1. The dismissal of Track Inspector J.P. O'Brien for alleged violation of Superintendent's Notice #13 and Rules 502 and 560 of Burlington Northern Rules of the Maintenance of Way was without just and sufficient cause and on the basis of unproven charges.

2. The Claimant shall be reinstated with seniority and all other rights and benefits restored and unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

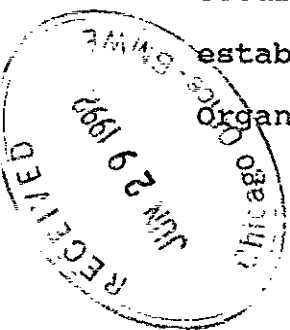
OPINION OF BOARD: Claimant, Track Inspector J.P. O'Brien, was assigned as a Track Inspector to patrol track between Galesburg, Illinois and West Quincy, Illinois. On February 24, 1986, a derailment occurred in the area that Claimant had been working. Roadmaster Jacobs inspected the location to determine the cause of the derailment and discovered various defects. As a result, an investigation was held on March 20, 1986 to determine Claimant's "alleged failure to properly inspect track, and detect unsafe track conditions...which resulted in derailment" A discipline notice dated April 14, 1986 advised Claimant that he was dismissed from service effective that date.

The Organization appealed Carrier's dismissal of Claimant. Carrier denied the appeal. Thereafter, the claim was handled in the usual manner on the property. It is now before this Board for adjudication.

Carrier insists that the expert testimony of Roadmaster Jacobs

refers to unsafe track conditions of Mile Post 240.80 which caused the derailment. It argues that the defects subsequently observed by Jacobs were of such substance that they should have been detected by Claimant if he was properly performing his duties. As such, Carrier concludes that Claimant's responsibility for the derailment was proven in this case. Accordingly, it asks that the claim be rejected in its entirety.

The Organization contends that Carrier improperly dismissed Claimant. It states that Claimant is responsible for inspecting nearly one hundred miles of track within an eight hour work day. On the date in question, it maintains that Claimant observed the track to be in conformance with the Carrier's and FRA prescribed standards and not in any unsafe condition. It argues that the only defects Claimant noted were missing bolts which he replaced. The Organization notes that four inches of snow had accumulated after a weekend storm thus making the track inspection job more difficult. It argues that although the testimony of Roadmaster Jacobs revealed several track defects when he inspected the track after the derailment, such is not conclusive evidence of Claimant's guilt. The Organization maintains that Jacobs' inspection was conducted three and one-half (3 1/2) hours after Claimant's inspection and after three trains had passed over the track without incident. In the Organization's view, the derailment which occurred hours after Claimant completed his inspection cannot establish negligence on his part. For the foregoing reasons, the Organization asks that Claimant's record be cleared of all



reference to this matter and that he be compensated for all wages lost.

A review of the record evidence convinces the Board that Claimant's discharge is unjustified. While the evidence does support Carrier's determination of guilt, dismissal is excessive in this case. Under these particular circumstances, a suspension from April 14, 1986 to the date of this Award is justified. This suspension serves as notice to Claimant of the seriousness of the incident and the fundamental employee obligation to adhere to all rules in the performance of duties. The testimony of Jacobs states that he observed several serious defects several hours after Claimant inspected the same area. Due to Claimant's failure to locate those defects, a derailment occurred. Due to the short time span involved, such defects should have been observed by Claimant as part of his duties as track inspector. For these reasons, a permanent restriction from positions of supervisory responsibility (Foreman, Assistant Foreman and Track Inspector) is placed upon Claimant's record. Accordingly, the claim is sustained to the extent indicated in the Opinion.

FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act as approved June 21, 1934;

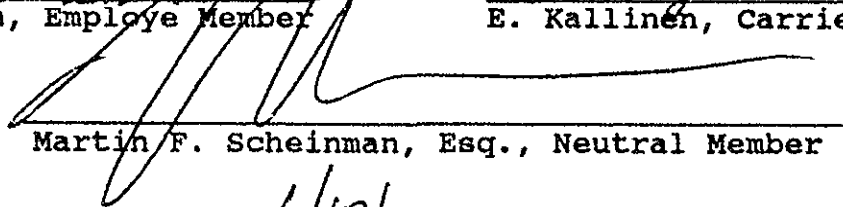
That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

That the Agreement was violated in part.

AWARD: Claim sustained to the extent indicated in this Opinion.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Esq., Neutral Member

6/18/92