

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and
BNSF Railway
(Former ATSF Railway Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement on November 15, 2004 when it issued the Claimant, J. H. Trevino, a Formal Reprimand for failing to properly identify and correct wide gage conditions that led to a derailment in the New South Yard, Houston TX; in violation of Rules 2.2.3, and 5.4.1, of the Engineering Instructions.
2. As a consequence of the violation referred to in part (1), the Carrier shall immediately remove any mention of this incident from Claimant's personal record, and make him whole for all time lost account of this incident.
[Carrier File No. 14-04-0158. Organization File No. 210-13N1-0422.CLM].

FINDINGS AND OPINION:

Upon the whole record and all the evidence, the Board finds that the Carrier and Employees ("Parties") herein are respectively carrier and employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the dispute herein.

The Claimant, Mr. Juan H. Trevino, entered the Carrier's service in 1979, in its Maintenance of Way Department. He was working as a Track Supervisor in Houston, Texas, when, on October 8, 2004, he was notified of an investigation to be held on the following charges:

[F]or the purpose of ascertaining the facts and determining your responsibility, if any, with the alleged violation of Engineering Instructions 5.4.1 Gage Limits and 2.2.3 Authority and Responsibility of inspectors in connection with derailment New South Yard, Houston, TX, September 26, 2004 and FRA defect South End of New South Yard, Switch # 712, Houston, TX.

The investigation was held on October 15, 2004. The Claimant was represented by the Organization's Assistant General Chairman. A transcript of testimony and evidence was prepared, and it appears in the record before this Board.

Roadmaster Mark W. Paris was called as a witness and he testified that the derailment of a six-axle locomotive at the 15 Lead Switch on September 26, 2004, was determined to be caused by a wide gage in excess of 58 inches, due to defective crossties. The maximum allowable gage permitted in this Class I track with wooden crossties is 57½ inches. He entered into evidence the Claimant's track inspection reports for the 15 Lead Switch for August and September, 2004, both of which show no defects when the switch was inspected by the Claimant.

Mr. Paris also testified that he had made his own inspection of Switch No. 712 on October 1, 2004, and found a defect prohibited by Federal Track Safety Standards, Section 213.135(c):

Each switch shall be maintained so that the outer edge of the wheel tread cannot contact the gage side of the stock rail.

Mr. Paris said there was evidence that wheel flanges had been wearing against the stock rail, and he offered a photograph showing the wear. The track inspection report prepared by the Claimant for the month of September, 2004, shows no defects at Switch No. 712, when it was inspected on September 9, 2004. (Yard tracks, such as those where the two switches are located, are required to be inspected monthly.) Mr. Paris testified that the Claimant had not reported to him any defects in either the 15 Lead Switch or Switch No. 712.

The Claimant testified that he had reported a wide gage condition at the 15 Lead Switch on May 27, 2004. He caused the Section Foreman to make repairs, and after that was done, he gaged the switch at the standard 56½ inches. He said that he had told the Foreman to replace the crossties at that location, but he had not done so, because there were no ties available. He said he also reported the condition to Roadmaster Paris.

He further testified that although he didn't prepare a written report, he had inspected the 15 Lead Switch on September 21, 2004, and found no defects. He also said that he prepares a monthly report, but actually inspects the track and switches more frequently, sometimes weekly. It was his opinion that operation of a six-axle locomotive through the sharp turnout at this switch caused the rail to be pushed out, resulting in the derailment.

The Claimant testified that he had been aware of the worn condition of the stock rail at Switch No. 712 for some time, but there was no replacement rail available of suitable dimensions to replace the worn rail.

On November 15, 2004, the Claimant was notified that he was being issued a Formal Reprimand for violation of Engineering Instruction ("E.I.") 5.4.1, which prescribes allowable gage limits, and E.I. 2.2.3, which outlines the responsibility of Track Inspectors. E.I. 2.2.3 requires that when an inspecting employee finds unsafe conditions or deviations greater than FRA Track

Safety Standards, they have the authority and responsibility to make repairs, place temporary speed restrictions, or remove track from service.

The Carrier's disciplinary decision was promptly appealed by the Organization, which argues that the derailment at the 15 Lead Switch was caused by operation of six-axle locomotives through its sharp turnout. The Organization points out that Mr. Paris gave an affirmative answer upon being asked, "[W]hen a long engine goes through a short switch do they sometimes have difficulties staying on the track?"

With respect to Switch No. 712, the Organization argues that the Claimant was aware of its defect and had advised the Section Foreman and the Roadmaster what repairs were needed, but they were put on hold awaiting receipt of proper materials. In any event, the Organization further argues, E.I. 2.2.3 permits the placing of temporary speed restrictions over the switch, as an alternative to taking the track out of service, and the posted speed at that point was only 10 m.p.h.

The Carrier rejoins that substantial evidence was developed to prove that the Claimant failed to identify and correct the wide gage condition at the 15 Lead Switch, which caused the derailment. The Carrier argues that the wide gage condition was the cause of the derailment, rather than the condition of the crossties. The Carrier did not address the defect at Switch No. 712.

The Board has read the transcript of testimony and evidence (twice) and carefully considered the arguments of the Parties, and concludes that the Carrier's disciplinary decision should be confirmed, for the following reasons.

The derailment of the six-axle locomotives at the 15 Lead Switch was probably the result of the wide gage,¹ and the wide gage in all likelihood resulted from the condition of the crossties. Roadmaster Paris testified that there were five defective ties in the turnout. While the movement of the six-axle locomotives through the sharp turnout was no doubt the immediate cause of the derailment, good crossties would have held the track gage within allowable limits. Defective ties, on the other hand, would have permitted the rail to move under the wedging effect of the locomotives' six-axle truck rigidity, thereby spreading the track.

It appears from the record that a wide gage condition was detected by the Claimant in May of 2004, and corrected at that time. He said he directed the Section Foreman to change out the defective crossties, but it had not been done. However, the Board is persuaded that he should

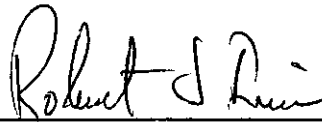
¹Besides Roadmaster Paris, others who investigated the derailment and agreed it was caused by wide gage were a mechanical officer, a Trainmaster, and the Division Engineer.

have continued reporting the defective ties until they were replaced. It seems that after the wide gage was corrected in May, he did not again make the tie condition the subject of his reports, although he was aware that replacement had not been made.


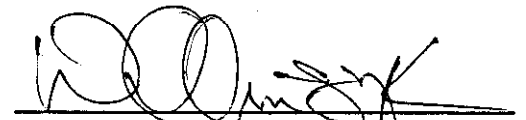
Similarly, after he noted the condition of Switch No. 712 — the date of his discovery of its worn stock rail does not appear in the record — he told the Section Foreman and the Roadmaster that it needed replacement, but thereafter did not address its condition in his monthly reports. Had he persisted in reporting the condition of these two switches, the deviations might have been repaired, and he would have thereby fulfilled his responsibilities. The claim will be denied.

AWARD

The claim is denied.



Robert J. Irvin, Neutral Member


R. B. Wehrli, Employee Member
William L. Yeck, Carrier Member

4/14-2-2005
Date