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PUBLIC LAW BOARD NO. 4426

RECEIVED BOARD

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYEES

"Organization"

VS.

CENTRAL VERMONT RAILWAY, INC.
"Carrier"

Award No. 13

STATEMENT OF CLAIM:

Claim of the Brotherhood that:

(a) The 30 day suspension, with 15 days actually served, assessed Light Maintenance Foreman, G. E. Royea and the 14 day suspension, with 7 days actually served, assessed Light Maintenance Helper J. M. Lawyer, was without just and sufficient cause and was not based on any clear and probative evidence that they were negligent in the performance of their duties.

(b) Claimants G. E. Royea and J. M. Lawyer shall now be compensated for all lost wages, including overtime.

OPINION OF THE BOARD

Claimants, G. E. Royea and J. M. Lawyer, are regularly assigned as Light Maintenance Foreman and Light Maintenance Helper, respectively, for Carrier. The duties of the Light Maintenance Foreman include the inspection of designated track and the performance of maintenance work. The position of Light Maintenance Helper is under the jurisdiction of the Light Maintenance Foreman. Claimant Royea was assigned the position of Light Maintenance Foreman in 1976. Claimant Lawyer became a

Light Maintenance Helper in February, 1988. Both Claimants were qualified in the Uniform Code of Operating Rules and FRA Track Safety Standards.

On May 21, 1989, train No. 444 with 101 cars left St. Albans, Vermont in a southerly direction. At M.P. 114.46, in Colchester, Vermont, on the Roxbury Sub-division, car CNA 553405 derailed and was dragged approximately four miles before the derailed car was detected and the train stopped. Due to the car being dragged this distance, there were approximately 2600 to 2800 track ties damaged, amounting to over \$60,000 in damage.

The Carrier immediately conducted an investigation to determine the cause of the accident. The train's speed was checked and found to be within the required speed zones for the track. Also, the wheels on the derailed car were thoroughly examined and found to be well within the FRA standards. The track was checked and a long sag of 120 feet on both sides was detected, which was in the immediate area of the derailment, and a low point noted of approximately 1-1/2 inches to 2 inches at the point of derailment. Carrier determined that the only irregularity found was the track condition at M.P. 114.46, which caused harmonic rock off.

Claimants had been assigned responsibility for examining the track which included the location of derailment. In April, 1989, Claimant Royea extended a "Slow Order" that had been placed on a section of track between M.P. 113.5 and M.P. 114 to include the track up to M.P. 114.73. On April 17, Carrier officials

examined the track and determined that it was in satisfactory condition. The "Slow Order" was therefore removed. Thereafter, at least 100 trains passed over M.P. 114.46 between April 17 and the date of derailment. Claimants continued to be responsible for maintenance of this track. They performed investigations on May 13 and May 20, the date before the derailment. Claimants did not place any "Slow Order" or other restriction on the track at that time.

On May 26, 1989, after Carrier conducted its investigation of the derailment and determined that it was caused by track conditions, Carrier notified Claimants they were directed to attend a formal investigation concerning their responsibility for the derailment. The hearing was held on June 14, 1989. Claimants were present and represented by the Organization. After consideration of the record developed at that hearing, Carrier determined to suspend Claimant Royea from service to the Carrier for 30 calendar days of which 15 days were actually served and 15 days were considered probation for a 12 month period. In addition, Carrier assessed Claimant Lawyer a suspension of 14 calendar days, of which 7 were actually served and 7 considered probation for a 12 month period. Claimants appealed the discipline, and when Carrier refused to rescind it, the Organization placed the claims before this Board.

The Carrier maintains that it has definitely established that the derailment was caused by the track conditions on M.P. 114.46, and Claimants were negligent in the performance of their

duties in not determining the poor track conditions and taking appropriate action. Carrier further points out that Claimant Royea has previously received a written reprimand for not fully performing his assigned responsibilities in a similar case.

The Organization maintains that Carrier has failed to prove that track conditions were responsible for the derailment. In addition, the Organization maintains that Claimants acted responsibly when in April, 1989 they placed a "Slow Order" on what became the derailment site, yet Carrier officials acted to remove that order. Finally, the Organization argues that even if the discipline against Claimant Royea is upheld, Claimant Lawyer bore no responsibility and his portion of the claim must be sustained.

The Board has concluded that the claim must be denied insofar as it concerns Claimant Royea and sustained insofar as it concerns Claimant Lawyer.

Carrier has presented substantial evidence in the record that the derailment at issue was caused by the track conditions at M.P. 114.46. As Light Maintenance Foreman, it was indisputably Claimant Royea's responsibility to insure that the portion of the track which included M.P. 114.46 was in satisfactory condition. This he did not do. Despite checking the area on the day before the derailment, and despite the presence of a sag which ultimately caused the derailment, Claimant Royea took no action. While Claimant Royea had placed a "Slow Order" on this portion of the track the previous month, and

that order had been removed by Carrier, more than a month had passed after removal of that order. The track had apparently deteriorated during that time.

The Board recognizes that the Organization has also presented a strong case that Claimant Royea was not responsible for the derailment. Nonetheless, it is important to note that Claimant Royea is not here entitled to the benefit of doubt concerning his performance. The Carrier had previously disciplined him for inadequate performance in maintaining his track. While the Organization was successful in having the suspension assessed in that case withdrawn due to procedural deficiencies on Carrier's behalf, a written reprimand was allowed to remain in Claimant Royea's record. Given the totality of circumstances, the Organization cannot now again rescue Claimant Royea from the discipline assessed by Carrier.

As to Claimant Lawyer, the Board is persuaded by the Organization that the claim must be sustained. Claimant Lawyer was under the direction of Claimant Royea. There is no indication that Claimant Lawyer did not do all tasks which he was assigned. In these circumstances, it cannot be held that he was also negligent in the performance of his duties. Accordingly, his portion of the claim must be sustained.

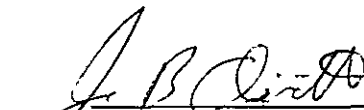
AWARD

The claim is denied insofar as it relates to Claimant Royea.

The claim is sustained insofar as it relates to Claimant Lawyer. As a remedy, the Carrier shall rescind all discipline assessed against Claimant Lawyer and make him whole for any wages or benefits lost as a result of his suspension. All money owed shall be paid within thirty (30) days.



W. E. LA RUE,
Organization Member



J. B. OVITT,
Carrier Member



S. E. BUCHHEIT,
Neutral Member