

PUBLIC LAW BOARD NO. 4431

Parties
to the
Dispute

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES:

vs.

BURLINGTON NORTHERN RAILROAD COMPANY

:
:
: Case No. 9
:
:

STATEMENT OF CLAIM

1. The Agreement was violated when the Carrier improperly withheld Section Foreman M. Mattson from service beginning July 1, 1986.
2. Claimant M. Mattson shall be returned to service and he shall be allowed

... all straight time and overtime hours worked by Section Foreman or Track Inspector that Claimant Mattson may have exercised Seniority over due to displacement of his permanent position as Section Foreman, also claimed are all health and welfare benefits (sic), vacation, personal leave days and Railroad Retirement (sic) credits.

OPINION OF THE BOARD

Claimant M.B. Mattson was employed by Carrier as a Foreman at the time of the incident that prompted this case. On April 11, 1984, Claimant suffered an on-duty injury to his lower back. He was out of work for about five months. On September 4, 1984, Claimant was returned to his Foreman position with instructions from his doctor that he

could not lift more than 20 pounds and then only occasionally. Claimant worked this job until August 1, 1985, when he was granted a leave of absence to have back surgery.

Surgery was performed on September 5, 1985, and on June 9, 1986, Claimant's physician released him for work as a Foreman, effective July 1, 1986. Claimant's doctor stated at this time that Claimant could not lift over 20 or 30 pounds on an occasional basis and he could not perform work that required twisting and bending of the lower back.

Carrier refused to return Claimant to duty on the basis that there was no job in the Maintenance of Way Department with such restrictions. It stated that Foremen were not just Supervisors who stood and watched, but were working Foremen and often were required to push and haul heavy materials to help the men with a heavy task. Petitioner objected to Carrier's description of a Foreman's duties. It argued that the Agreement describes a Foreman as follows:

B. Foreman

An employe assigned to direct the work of men and reporting to officials of the railroad shall be classified as a foreman.

Petitioner concluded that, based on that description, an employe working as a Foreman did not have to lift heavy

items and Claimant could clearly perform the required duties.

Carrier argued, however, that the statement in the Agreement was not a job description that outlined the Foreman's complete duties. It submitted a job description to the Claimant's doctor for review. It then requested the doctor to reevaluate and state if Claimant was physically capable of performing the duties outlined. The doctor did not affirm that Claimant could perform the duties as outlined in the job description. The pertinent part of a Track Foreman's and a Track Inspector's job description reads as follows:

TRACK FOREMAN

Foreman directs the work of his assigned crew and performs and assists in all tasks associated with the installation of new track and the maintenance of existing track. It is an extremely strenuous job that can require constant physical and manual effort.

Most of the work is manual labor assisted by power equipment where available. A foreman may be required to assist in manually loading or unloading material kegs (200 lbs. or more), crossties (250 lbs. or more) and rails (1,820 lbs. or more), which are needed for the job. To secure the rail to the ties, foremen and trackmen drive spikes and anchors with mauls (6 or 8 lbs.).

PHYSICAL REQUIREMENTS:

Overall Strength

Job can be classified as very heavy work. Requires occasional lifting and carrying of heavy loads as described above.

Coordination

Balance required while assisting in the loading and unloading of materials and distributing ballast from moving cars. Constantly stoops and kneels while spot raising track and to check surface of track.

Range of Motion

Bending over rail to raise track, reaching required to give hand signals or directions while aligning track, etc. Some twisting and stooping required as part of job.

TRACK INSPECTOR

Track Inspector is an employee assigned the responsibility for the proper inspection of tracks, roadway and the right-of-way on his district(s). He must meet all requirements of the position per FRA Rule 213.7.

Inspection must be made on foot and/or by riding over the track in a vehicle at a speed that allows the person making the inspection to visually inspect the track structure for compliance with BN Standards. He must be able to make corrections to deviations found or prescribe appropriate remedial action to correct or safely compensate for those deviations.

PHYSICAL REQUIREMENTS:Overall Strength

Job can be classified as hard work. Requires setting hi-rail on track each day which can amount to 100 lbs. lifting pressure on hi-rail assembly gear.

Must be able to lift angle bars from ground to vehicle and vehicle to ground (75 lbs. or more). Must be able to use a track wrench to tighten track bolts, switch braces, etc.

Coordination

Balance required while loading or unloading tools and angle bars. Must be able to handle switch stands to make reverse throws, checking switch points for proper gap, ease of movement, etc.

Range of Motion

Variety of motions required such as; setting hi-rail vehicle on or off track, lining switches to check proper throws and fits which is a twisting motion, stooping or bending over the rail to check surface and alignment of track, bridge ends and switches.

This Board has reviewed the position of each side and it concludes that the job description submitted by Carrier far more realistically describes what a Track Foreman does than the description of a Foreman contained in Rule 55 (B).

Given this conclusion, we are compelled to decide that

Carrier need not return Claimant to work until it is satisfied that Claimant can properly perform his duties without threat of injury to himself or to others working around him. This Board can find no basis in the record for directing Carrier to return Claimant to work at this time.

AWARD

The claim is denied.

R.E. Dennis
R.E. Dennis, Neutral Member

Bruce H. Glover
Bruce Glover, Employee Member

Maxine Timberman
Maxine Timberman, Carrier Member

May 3, 1989
Date of Approval