

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6466

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

GRAND TRUNK WESTERN RAILROAD, INCORPORATED

)
) Case No. 9
)
) Award No. 4
)

Martin H. Malin, Chairman & Neutral Member
P. K. Geller, Employee Member
M. J. Kovacs, Carrier Member

Hearing Date: December 11, 2003

STATEMENT OF CLAIM:

1. The dismissal of Track Inspector A. J. Koselke for his alleged failure to properly inspect track which resulted in the derailment of a train on February 20, 2003, was without just and sufficient cause and based on an unproven charge (Carrier's File 8365-800)
2. Track Inspector A. J. Koselke shall now be reinstated to service and **** We also request all wages (straight time, overtime, holiday pay, etc.) all credits (vacation, personal days, retirement, holidays, etc.) and all benefits (health, dental, vision, etc.) including but not limited to the benefits listed on the enclosed attachment.

FINDINGS:

Public Law Board No. 6466, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On February 26, 2003, Carrier notified Claimant to appear for an investigation on March 7, 2003, concerning his alleged failure to properly inspect track which led to the derailment of a train at Sedley, Indiana, on February 20, 2003. The hearing was held as scheduled. On March 14, 2003, Carrier notified Claimant that he had been found guilty of the charge and dismissed from service.

The record reflects that on February 20, 2003, at approximately 6:00 p.m., Train H-535-31-19 derailed at Sedley, Indiana, MP 50.4. The derailment resulted in approximately \$1 million in damage. An FRA on-site investigation team determined that the derailment was caused by wide track gage.

Claimant was a Patrol Foreman who was responsible for inspecting track between MP 30.6 and MP 105.0. There is no dispute that Claimant was responsible for inspecting the track where the derailment occurred, or that he inspected that portion of the track two days before the derailment, i.e. on February 18, 2003. The record reflects that the track at the derailment site exceeded the FRA maximum track gage. It further reflects that the rail was cupped or grooved, indicating that the wheels had been running on top of the rail toward the inside gage. Testimony from a Track Foreman and the Engineering Superintendent established that cupping of rail takes place over a period of weeks. Claimant should have observed the wide gage when he inspected the track on February 18. His failure to do so was negligent. We hold that Carrier proved the charge by substantial evidence.

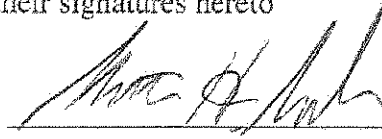
Accordingly, we turn to the penalty imposed. We note that this is a very serious offense, but we also note that Claimant's service with Carrier dated to 1976. There is no evidence of any prior discipline in Claimant's twenty-seven years of service. Under the circumstances, we conclude that a lengthy suspension and a significant period of disqualification as a track inspector were warranted but that the penalty of dismissal was excessive. Accordingly, we award that Claimant is to be reinstated to service with seniority unimpaired but without compensation for time out of service. Claimant is to be disqualified as a track inspector for a period of two years. After the two year period expires, Claimant may seek to requalify as a track inspector.


AWARD

Claim sustained in accordance with the Findings.

ORDER

The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto


Martin H. Malin, Chairman


M. J. Kovacs
Carrier Member


P. K. Geller
Employee Member

Dated at Chicago, Illinois, January 22, 2004