

PUBLIC LAW BOARD NO. 7120

PARTIES TO DISPUTE: (BROTHERHOOD OF MAINTENANCE OF WAY
(EMPLOYEES DIVISION
(
(CSX TRANSPORTATION, INC.

STATEMENT OF CHARGE:

By letter dated January 14, 2008, from Roadmaster John Saladin, Daryl D. Stephens, the Claimant, was directed to attend an Investigation to be held on January 30, 2008, "to develop the facts and place your responsibility, if any, in connection with the derailment that occurred on the Tampa Terminal Subdivision at Hookers Point Spur on January 3, 2008 at approximately 01:40 hours at MP S 843.2. It is alleged," the letter continued, "that you failed to notify your supervisor about the reverse elevation in a curve that led to the derailment of Y33002 consisting of 1 car that cost CSXT over \$7,500.00 to repair." The letter stated that the Claimant was "charged with failure to perform your duties as Track Inspector, failure to identify and take remedial action on defects that did cause a derailment and conduct unbecoming." The Claimant's actions, the letter asserted, "appear to be in possible violation of CSX Operating Rule - General Rule A, F, L, S, General Regulation 2, GR 3, GR 6, GR 14, GR 16, MofW regulations MWI 1104-05 and Track Safety Standards Part 213."

FINDINGS:

Public Law Board No. 7120, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as

approved June 21, 1934.

The Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Kenneth W. Ford, who was then a Foreman but has since been promoted to Roadmaster, investigated the derailment on the same day that it occurred, January 3, 2008. A single car, the 16th car of a 51-car freight train, derailed. The derailed car was a covered hopper and was empty. Mr. Ford testified that his experience is in the track department and that he is a qualified track inspector.

Mr. Ford testified that according to the track notes that he took, there was a reverse elevation in the curve in the area of where the derailment occurred. The term "reverse elevation," he explained, means that the high side of a curve is lower than the low side. Mr. Ford's track notes showed a -2¼ inch reverse elevation immediately before the point of derailment and a +1 inch elevation beginning approximately 16 feet after the point of derailment. Together, Ford stated, the two measurements amounted to an elevation difference of 3¼ inches. According to Ford, this was a defect in the track where the derailment occurred. The track involved was Class 1 track, Mr. Ford stated, and the deviation permitted by the FRA standard for such track was 3 inches. The CSX standard, according to Ford, was also 3 inches.

Roadmaster John Saladin, Jr. testified that track inspections in the location where the derailment occurred are conducted once a month. The last track inspection prior to the derailment was done on December 15, 2007. Daryl Stephens performed the inspection. In the section of the report for showing FRA defects, Stephens did not list any defect for Hookers Point. "After the track notes were taken and I looked at them along with Mr. Ford," Roadmaster Saladin testified, "I noticed that they had 1 inch

elevation and then back less than 62 feet they had a minus 2¼ inch. That's a reverse elevation of 3¼ inches. And the FRA says you're only allowed 3 in this class of track, which is Class 1."

Roadmaster Saladin testified that the car that derailed went over the top of the rail on the high side and then traveled off the rail on the ballast line. Asked whether the derailment could have been prevented, Mr. Saladin stated, "Yes, it could have. If you're inspecting the track and you find a deviation like that or if it's not quite a defect and you want to make a note of it, you put it on the Track Inspection Record as a condition report." Questioned what was determined to be the cause of the derailment, Roadmaster Saladin testified, "I believe it was a T102, which is crosslevel of track irregular, not at joint."

Roadmaster Saladin was asked if in his experience as a Roadmaster the deviation occurred since the last time the track was inspected on December 15th. He stated that he did not believe so because he did not see a washout or a sink hole or anything of that nature in the area. He did not believe that it was something that happened overnight, Mr. Saladin testified. When a Track Inspector finds a defect in a track, Mr. Saladin stated, he is supposed to fix the defect, slow order the track, or take the track out of service. After the derailment, the Roadmaster testified, a surfacing team corrected the defect.

In response to Organization questioning Roadmaster Saladin testified that between four or six trains ran on the track every day, he was not sure of the number. He believed, he stated, that the trains ran up and back every day on the rack. The Roadmaster was asked by the Organization whether it was possible that the defect developed between December 15th, when the track was inspected, and January 3rd, when the derailment occurred. He answered, "Not to this magnitude I don't believe, no." Mr. Saladin

acknowledged that he himself had never inspected the track prior to the derailment and therefore had no personal knowledge of the condition of the track prior to the derailment.

Mr. Saladin was asked whether, if the track was in a soft, muddy area and there was rain, it was “possible for those engines and cars that are traveling over that area that . . . frequently—is it possible for them to cause this defect?” He answered, “Not in a month I don’t believe, no.” Roadmaster Saladin was asked if he knew how many times a scheduled surface gang had been down in the area in 2007. He stated that he did not. Mr. Saladin acknowledged that there was fresh rock between and around the tracks in question, as shown in a photograph introduced into evidence, but stated that he did not know who ordered the rock to be dumped there.

The Claimant testified that he has been with the company for three years and, a Track Inspector for two years. He attended Track Inspectors school for a week and has had on-the-job training. The reason that no defect was listed on his inspection report for Hookers Point, he stated, was that there was no defect.

The results of the Investigation were communicated to the Claimant by letter dated March 31, 2008, from Ron Foster, Division Engineer, which stated:

Testimony brought out in the investigation revealed that there was a reverse elevation in the one degree curve where this derailment occurred on track that you were responsible to inspect. Testimony also reveals that you are under a misunderstanding of how to measure this type of defect. In addition, Operating Rules F and GR14 were violated for not reporting defects in the track and correcting the defects. You were also not in compliance with the MWI 1104-05 and 2001-03 by allowing this curve and elevation condition to occur.

The assessed discipline was 20 days’ suspension. In addition, the Claimant was ordered

to take the next available Track Inspector class at the REDI Center in Atlanta, Georgia.

The record is clear that on January 3, 2008, there was a difference in crosslevel of more than 3 inches between two points less than 62 feet apart in the curve on the outside or high rail at Hookers Point. This is seen from the Engineering Department Train Accident Report which shows a $-2\frac{1}{4}$ inch reverse elevation in the curve on the $15\frac{1}{2}$ foot track segment immediately before the point of derailment and a $+1$ inch elevation in the curve in the track segment beginning 31 feet from the point of derailment. This amounted to a $3\frac{1}{4}$ inch difference in crosslevel between two points less than 62 feet part.

The table in Carrier Exhibit 10, the fourth row from the top, shows that a difference in crosslevel of more than 3 inches between any two points less than 62 feet apart on Class 1 track is a defect in the track surface.¹ Organization Exhibit 1 uses the term “warp” to refer to “the difference in crosslevel between any two points less than 62-feet apart.” In other words, to read Carrier Exhibit 10 and Organization Exhibit 1 together, a warp of more than 3 inches on Class 1 track is a defect. Carrier Exhibit 7, the first of the two photographs of the derailment site, refers to the combination of a $-2\frac{1}{4}$ inch reverse elevation and a $+1$ inch elevation in the curve at the derailment site as “a $3\frac{1}{4}$ inch warp.”

At the Investigation the Claimant contended that there was not a $3\frac{1}{4}$ inch difference in crosslevel because “[i]f you’re going to measure the same rail, then it states in the MWI that you must subtract. So if they have those two numbers [$-2\frac{1}{4}$ and $+1$]

¹At the Investigation the Carrier witness mistakenly cited the third row in the table rather than the fourth as the pertinent defect found on the Hookers Point track on January 3, 2008. (Tr. 40). The Engineering Department Train Accident Report (Carrier Exh. 6) and the photograph of the derailment site (Carrier Exh. 7), however, clearly show that there was a $3\frac{1}{4}$ inch warp on the Hookers Point track—a clear defect according to the fourth item in the table in Carrier Exh. 10.

there, they must be subtracted.” The source for the Claimant’s statement about same-rail measurements is Organization Exhibit 1. That exhibit has a diagram showing warp both on tangent track and on curved track. At the bottom of the diagram is the statement, “Subtract largest and smallest same rail measurements or add opposite rail measurements with[in] 62'.”

The Claimant, however, apparently was not aware that if a +1 is subtracted from $-2\frac{1}{4}$ the resultant number is $-3\frac{1}{4}$.² At the Investigation the Claimant asked Mr. Ford, “If you subtracted a positive 1 from a negative $2\frac{1}{4}$, what would you come up with?” Mr. Ford correctly answered, “ $3\frac{1}{4}$.” (Tr. 29).³ It is clear that the Claimant did not accept Mr. Ford’s answer, apparently believing that the answer should have been $-1\frac{1}{4}$. See transcript at pages 72-73. The Claimant thereby showed that he did not know how to calculate same-rail warp where one of the measurements is positive and the other is negative. It is for that reason, no doubt, that one of the conditions of discipline in this case was that the Claimant enroll in the next available Track Inspector class at the REDI Center in Atlanta, Georgia.

It is not enough for the Carrier to prevail in this case, however, that it prove that a defect that could have caused the derailment existed on January 3, 2008. It must also establish by substantial evidence, as part of its burden of proof, that the defect also existed on December 15, 2007, when the Claimant last inspected the track, and that the

² Think of a graph, for example. The spaces on the graph to the right of the y-axis represent positive numbers, and to the left, negative numbers. You would diagram a $-2\frac{1}{4}$ by placing a dot $2\frac{1}{4}$ spaces to the left of the y-axis on the x-axis, and a +1, with a dot 1 space to the right of the y-axis. If you count the spaces on the x-axis between the two dots, you will have $3\frac{1}{4}$ spaces. This shows that the difference in crosslevel between a $-2\frac{1}{4}$ inches and a +1 inch is $3\frac{1}{4}$ inches.

³The $3\frac{1}{4}$, of course, would be a negative $3\frac{1}{4}$.

Claimant failed to repair or report the defect. The Board does not believe it necessarily follows from the fact that the warp on the track at Hookers Point exceeded 3 inches on January 3, 2008, that it also exceeded 3 inches 18 days earlier on December 15, 2007, when the Claimant inspected that track.

The Carrier directly addressed that question at the Investigation. The hearing officer asked Roadmaster Saladin, "In your experience as a Roadmaster, did this deviation occur since the last time it was inspected on December 15th?" He answered, "I don't believe so. Like I stated before there, I didn't see a washout or a sink hole or anything of that nature in the area." In response to questioning by the Claimant, Roadmaster Saladin stated that he did not believe that train traffic on the track since the previous inspection could have caused the defect found on January 3, 2008. He stated that he believed that the weather was dry on the day of the derailment, that he knew that it was clear. He testified that the drainage on the track was good.

The Organization did not present any testimony or other evidence to counter Roadmaster Saladin's testimony. For example, the Claimant is familiar with the track in question, having inspected it on more than one occasion. In addition, he affirmatively acknowledged his familiarity with the track. Yet he did not testify that it was his experience that the track in question did deviate significantly in reverse or superelevation from month to month. In addition, when asked how often he was required to inspect the track at the location of the derailment, he stated, "Every 30 days with a 20 day increment. You can't do it within 20 days." (Tr. 62). His answer would indicate that less than 20 days was too short a period of time for the track condition to change under normal circumstances. In the present case only 18 days had passed from the December 15 inspection until the date of the derailment.

Further, according to the Claimant's testimony, there was even greater reverse elevation on December 15 than on January 3. Thus the Claimant testified that he found $-2\frac{3}{4}$ inches reverse elevation, which is $\frac{7}{16}$ of an inch greater reverse elevation than any of the measurements shown on the Engineering Department Train Accident Report. There was no evidence, therefore, that the area had sunk since the last inspection. Nor was there any testimony or meteorological data presented to show that there had been much, or any, rain between December 15, 2007, and January 3, 2008, that might cause the roadbed to sink. Further it is undisputed that the drainage on the track was good.

Finally, of great significance is the fact that the Claimant revealed through his testimony that he did not know how to measure warp correctly when one point on the rail has superelevation and the other point on the same rail has reverse elevation. Therefore, the fact that he did not list a defect on his inspection report for December 15 does not necessarily mean that his crosslevel measurements did not show a defect. It could just as well be that he did not understand how to interpret his measurements. Taking all of the circumstances into account, the Board finds that there was substantial evidence on the record to justify the Carrier in determining that the condition of the track at Hookers Point on the day of the derailment was substantially the same as on December 15, 2007, when inspected by the Claimant.

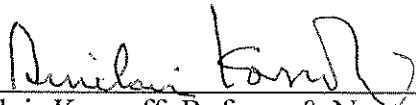
The Carrier has established by substantial evidence that the Claimant failed to report a defect in the track at Hookers Point that he inspected on December 15, 2007, and that such defect, which also existed on January 3, 2008, could have caused the derailment which occurred on the latter date. The claim will be denied.

A W A R D

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.

A handwritten signature in cursive script, appearing to read "Sinclair Kossoff", is written over a horizontal line.

Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois
September 2, 2008