

PUBLIC LAW BOARD NO. 5696
AWARD NO. 14
CASE NO. 14

BURLINGTON NORTHERN RAILROAD

PARTIES
TO DISPUTE:

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the current Agreement when it disqualified Mr. J. D. McMillan from working a position of Foreman because he had allegedly not provided for the proper gauge at a switch he was in charge of repairing, allegedly in violation of FRA and Burlington Northern Rules.
- (2) As a consequence of the Carrier's violation referred to above, Claimant's Foreman's seniority shall be reinstated and he shall be compensated for all wages lost.

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the

JOHN P. MARR
BURLINGTON NORTHERN RAILROAD
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subject matter.

Claimant was disqualified from his position as Foreman on November 7, 1994 due to his alleged failure to comply with Carrier and FRA Track Standards while making track repairs near Stroud Oklahoma during the work week of October 31-November 3, 1994.

The December 2, 1994 investigation reveals that during a routine inspection Roadmaster Emborg found a frog on the main line turnout near Stroud to have between a 3/4" and 7/8" tight gage on a switch where Claimant was the Foreman of the mini tie gang responsible for putting new switch ties in during the week in question. Emborg's findings were confirmed by Foreman Wheeler, who also inspected the line for Standard compliance, and noted that the only reason for such tightness would be that it was improperly gaged. There was no defect found in Claimant's track gage. The track was taken out of service until the gage was corrected. There is no dispute that an improper gage could be a serious safety hazard.

Claimant explained that he gaged the track in that area, and that he had never been trained to do so nor had he ever done so before this time. His mini tie gang had 5 machine operators aside from himself, and he also had to do the work of a truck driver and laborer during that work week. Claimant stated that he asked the senior men on his gang, neither of whom were FRA-qualified, about properly gaging when there was an overflow, and he used the track gage as he was taught, underneath the overflow. Claimant noted that he gaged the rail in question 1/4" tight on each side due to that amount of overflow on each rail, and that he felt he complied with all the Rules and gaged the frog in question properly. He admitted

that if the rail was as tight as Roadmaster Emborg stated then it was not proper.

The record reflects that Claimant was a 2 1/2 year employee at the time of the incident, and had successfully bid into a Foreman position after 6 months of service. He had received no formal training nor received any instruction on how to properly gage a switch or on FRA Standards. Claimant had taken and passed a rules book test in March, 1994. Claimant testified that he had previously asked two Roadmasters for formal training and a copy of the FRA Standards book, but had received neither. Claimant admitted that he did not think that he was qualified for the Foreman job at the time that he got it, or at the time of the incident in question, since he felt he needed additional training. Foreman Wheeler testified that Foremen working on switches should be FRA-qualified, which requires a course given by the Railroad Bureau of Education or working under a FRA-qualified Foreman for a one year period, neither of which Claimant had.

The Carrier argues that Claimant failed to comply with track and FRA Standards and violated Rule 20.1, which states that Foremen must not authorize work that will interfere with the safe movement of trains. The Carrier contends that Claimant was clearly not qualified to perform all the responsibilities of a Foreman, by his own admission.

The Organization contends that Claimant gaged the track correctly using the standard track gage allowing for the overflow, and that the Roadmaster's findings with a tape measure cannot negate this fact. The Organization further stresses that Claimant never received the proper training and cannot be held accountable when he was responsible that

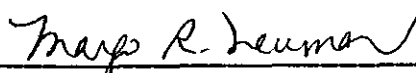
week for his own work as well as a truck driver and laborers job, a situation created by the Carrier's improper staffing. It seeks the reinstatement of Claimant's Foreman seniority.

After full consideration of all of the facts in this case, this Board is of the opinion that substantial evidence in the record supports the Carrier's action in disqualifying Claimant from his Foreman position. There is no doubt that Claimant attempted to follow what he knew to be the proper procedure for gaging the frog in question, and that he felt that he was complying with all Rules in doing so. Further, under the circumstances, Claimant cannot be entirely faulted for improperly gaging the switch, since he had never been trained to do so, nor shown the proper procedure or tolerances in situations of overflow. This Board has no reason to question Roadmaster Emberg and Foreman Wheeler's assessment that the gage was excessively tight.

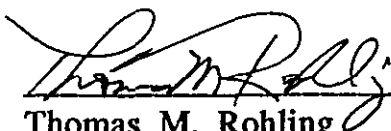
Regardless of the reasons why the Track and FRA standards were not followed, the situation created by Claimant's mini tie gang on the date in question was a safety hazard which could have had disastrous results. While the Carrier may be partially responsible for Claimant's lack of training which may have led to this situation, by Claimant's own admission, he was not qualified to be a Foreman at the time. That being the case, the Carrier acted properly in removing him from that classification. However, since Claimant seems to be sincere in his desire to receive training to qualify for that position, he should be given that opportunity when it next presents itself.

AWARD:

The claim is denied.



Margo R. Newman
Neutral Chairperson



Thomas M. Rohling
Carrier Member



E. R. Spears
Employee Member

Fort Worth, Texas
~~December~~, 1996
January 2, 1997