

AWARD NO. 72

CASE NO. 86

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The ten (10) day suspension of Assistant Foreman G.A. Sanchez, effective May 2, 1978, was without just and sufficient cause and unsupported by any evidence educed. (System File D-11-17-260 and D-11-17-261)
- (2) The fifteen (15) day deferred suspension of Foreman J. V. Rodriguez is without just and sufficient cause and wholly unwarranted.
- (3) Assistant Foreman Sanchez now be compensated for all time lost as a result of the discipline referred to in Part one (1) of this claim and his record cleared of the charges with all rights unimpaired.
- (4) Foreman Rodriguez to have discipline referred to in Part two (2) of this claim stricken from his record.

OPINION OF BOARD:

Claimants were employed as Foreman and Assistant Foreman of a Section Gang at Lake Street Interlocking, just outside the Chicago Passenger Terminal. As part of their assigned duties both employees have responsibility to make inspections of track as directed by the Roadmaster and to report or repair unsafe conditions. On April 10, 1978, during the morning rush hour, Suburban Train 312 was operating across the Lake Street Operating Plant on Track 6 into the Passenger Terminal. The cars of the train passed unscathed, but as

the pusher locomotive passed a certain point the rails spread and the locomotive dropped between the rails onto the ground.

Carrier cited Claimants following the accident and following investigation imposed suspensions without pay on the basis of the following charge:

CHARGE: Your responsibility, if any, in failure to properly inspect, report, and/or repair Track #6, Lake Street Interlocking, thereby causing derailment to suburban train #312, unit 519 on April 10, 1978 at approximately 8:15 A.M.

Investigation of the hearing transcripts persuades us that Carrier has failed to carry its burden of proof that the Claimants had responsibility in the accident. The record indicates that Claimant Rodriguez inspected the track in question on April 3, 1978 and found the gauge within limits. Carrier argues circumstantially from the subsequent spreading of the track that the gauge could not have been correct. However, speculation is not evidence. Moreover, it is unexplained on this record how many other trains, including all of the cars on Train 312 passed the point before the locomotive fell through, if indeed Rodriguez had overlooked proper gauging of the track. The record also indicates that a full train inspection in 1975 concluded with recommendations that Track 6 should be extensively reworked with new ties and ballast; but that job had still not been done as of 1978. The circumstantial evidence available on this record does not support a conclusion of Claimants' negligence as a proximate cause for the accident. Finally, Carrier contends that Claimants were culpable for failure to inspect Track 6 with greater frequency. However, we find on this record no objective evidence concerning instructions or normal work requirements for frequency of inspection. So far as the record shows the Claimants are directed by Roadmasters regarding track inspection. On the basis of all of the foregoing, we find that Carrier has not produced substantial probative evidence on this record to supports its conclusion that the Claimants were culpable in the accident.

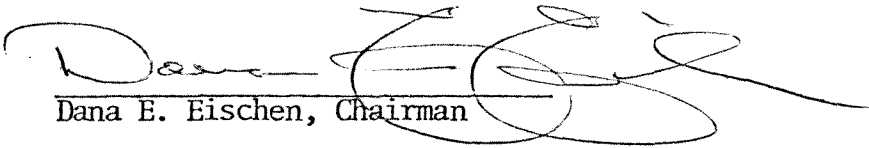
FINDINGS:

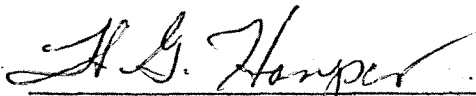
Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

1. that the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
 2. that the Board has jurisdiction over the dispute involved herein;
- and
3. that the Agreement was violated.

AWARD

Claim sustained. Carrier is to comply with this Award within thirty (30) days of issuance.


Dana E. Eischen, Chairman


H. G. Harper, Employee Member


R. W. Schmiede, Carrier Member

Date: August 26, 1980