

PUBLIC LAW BOARD NO. 3241

In the Matter of:

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES

and

THE WESTERN PACIFIC
RAILROAD COMPANY

National Mediation Board
Administrator

Case No. 1
Award No. 1

Date of Hearing: November 18, 1982
Place of Hearing: San Francisco, California
Date of Award: February 13, 1983

MEMBERS OF THE BOARD

Employes' Member: S. E. Fleming
Carrier Member: L. A. Lambert
Neutral Member: John B. LaRocco

STATEMENT OF THE CLAIM

That H. W. Powell be reinstated to the position of Track Foreman and compensated for all time lost therefrom and that the charges be expunged from his personal record as a result of formal investigation held February 1, 1982.

OPINION OF THE BOARD

This Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act as amended; that this Board is duly constituted by an Agreement dated July 23, 1982; and that all parties were given due notice of the hearing held on this matter.

I. BACKGROUND AND SUMMARY OF FACTS

On January 24, 1982, eleven cars of train derailed near the east portal of Spring Garden Tunnel. Two days later, Claimant, a Track Foreman, was notified to attend an investigation to determine his alleged responsibility for leaving the track at the east end of the tunnel in such poor condition that it caused the derailment. Though the Carrier originally dismissed Claimant from service, it permitted him to exercise his seniority to return to service as a Laborer on May 1, 1982. Claimant urges this Board to reinstate him to the Track Foreman's position, order the Carrier to pay him one and one-half months of back pay plus the difference in pay between the Foreman's rate and Laborer's rate since May 1, 1982 and to clear his personal record.

At the investigation held on February 1, 1982, the District General Foreman and the Section Foreman at Keddle testified that on January 24, 1982, they thoroughly examined the track where the derailment occurred. They found the track gauge had expanded by approximately two inches which allowed the trucks to fall inside the rail. Both officials observed that all ballast had been removed from the cribs (between the ties) though ballast remained around the ends of the ties. In addition, for a span of seventeen and one-half feet, the ties were disconnected from the rails. Based on their experience, the General Foreman and Section Foreman theorized that the Section Gang assigned to maintain track in the area had removed the ballast from the cribs in anticipation of changing out the ties and pouring in new ballast. The absence of ballast in the cribs left the ties and rails unsupported so as trains moved over the track, the ties gradually loosened and became disengaged from the

rails resulting in an abnormally wide gauge. Both men testified that Claimant had been instructed not to leave tracks in a skeletonized condition overnight. According to the two foremen, a section gang can remove and replace six ties in a single work day (which they said was the normal practice).

Claimant admitted that he had worked on the track on January 18, 1982, and that he and his gang had removed the ballast from the cribs in order to replace ten deteriorated ties. They intended to return the next day to install new ties and ballast. However, because Claimant was instructed to assist with snow removal, he was unable to return to the tunnel work site. Claimant told the Roadmaster that he wanted to resume work on the track in the tunnel but he did not specifically state that he had left the track in a skeletonized condition. The tracks remained skeletonized until the derailment.

During the week long period between January 18, 1982 and the derailment, several Carrier officials (including a track inspector) rode over the skeletonized portion of track. They did not notice the missing ballast or any other unsafe condition. However, they testified that they were preoccupied with snow problems along with the right of way and were not inspecting the track.

II. POSITIONS OF THE PARTIES

The Carrier contends that it has presented sufficient evidence that Claimant not only left the track in an unsafe condition but also aggravated the situation by failing to report the dangerous condition. Thus, the Carrier concludes that Claimant's carelessness was the primary cause of an expensive derailment and that his negligence could have resulted in serious personal injury or loss of life to the train crew.

The Organization, on the other hand, submits that Claimant performed his duties in the usual fashion on January 18, 1982. In addition, the Organization

argues that if Claimant had left the track in an unsafe condition, the Roadmaster and Track Inspector should have discovered the hazard well before the derailment occurred. Lastly, the Organization characterizes the discipline as a permanent demotion which was excessive and unduly harsh in light of Claimant's many years of fine service.

III. DISCUSSION

This Board has carefully reviewed the lengthy record compiled in this case. We have determined that the Carrier has met its burden of proving, with substantial evidence, that Claimant committed the charged offense.

After Claimant removed the ballast from the cribs, the pressure from trains moving over the track eventually caused the ties to disconnect from the rails. The seventeen and one-half feet of unsupported track was a contributing factor to the derailment. Claimant, as the Foreman, must accept his responsibility for starting the chain of events leading to the derailment. Claimant is not exonerated merely because other Carrier personnel failed to detect the unsafe track condition. Claimant knew the uncompleted track repair work constituted a potential hazard. When Claimant could not return to the tunnel work site on January 19, 1982, he should have either immediately and specifically informed the Roadmaster about the dangerous track condition or he should have instituted appropriate safety measures. (Claimant could have issued a slow order.)


We expect the Carrier to strictly enforce all safety rules. In this case, it could justifiably impose discipline. The suspension and demotion were commensurate with the seriousness of Claimant's offense. While the Carrier has stated that it has not permanently demoted Claimant, we agree with the Organization's contention that the assessed discipline could have the practical effect of barring Claimant from returning to a Track Foreman position. Thus, in view of Claimant's long years of service with the Carrier, we will restore

Claimant's seniority as a Track Foreman. Though we are not reinstating Claimant to his former position, he may now readily exercise his Track Foreman's seniority to claim a vacancy (when one arises) under the terms of the applicable Agreement subject to one exception. We rule that Claimant shall not forfeit his seniority as a Track Foreman if he fails to exercise his seniority to claim a vacancy which is remote from the general area of his current assignment. This Board is confident that the parties will be able to work together to implement this award in accord with our guidelines.

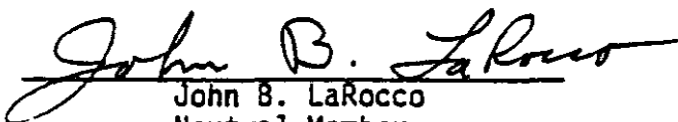
AWARD AND ORDER

Claim is sustained but only to the extent specified in our Opinion. The Carrier shall restore Claimant's seniority as a Track Foreman without any impairment to his seniority. The remainder of the claim is denied. The Carrier shall comply with this Award within thirty days of the date stated below.

DATED: February 13, 1983


S. E. Fleming
Employees' Member


L. A. Lambert
Carrier Member


John B. LaRocco
Neutral Member