

RECEIVED-DENVER
LABOR RELATIONS

PUBLIC LAW BOARD NO. 4104

SEPT 18 89

Case No. 30

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PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way
Employees

vs.

Burlington Northern Railroad

STATEMENT OF CLAIM: "Claim of the System Committee of the
Brotherhood that:

1. The disciplinary dismissal imposed upon Section Foreman J.D.E. Williamson and Track Inspector V.S. Brito July 28, 1983 for alleged "...failure to properly correct red tag defect at M.P. 532.4..."(Williamson) and for alleged "...failure to inspect track in a manner that would have prevented derailment at M.P. 532.4 on June 29, 1983..." (Brito), respectively, was arbitrary and on the basis of unproven charges. (System File 9 Gr MWA 83-11-14F)

2. Claimants J.D.E. Williamson and V.S. Brito shall be returned to service, have their records cleared of the charges leveled against them and each be compensated for all wage loss suffered."

OPINION OF THE BOARD: At the time this dispute arose, Claimants, J.D.E. Williamson and V.S. Brito, were employed as Section Foreman and Track Inspector, respectively. On June 29, 1983 a derailment occurred which lead to an investigation concerning Claimants' involvement. A hearing was held on July 12, 1983 resulting in the dismissal of both Claimants. The Organization subsequently appealed the discipline and Claimants were reinstated to service without pay after a disciplinary suspension. The Organization has now appealed this claim to this Board for the period of time that Claimants were held out of service.

The Organization contends that Carrier's imposition of discipline was improper. On May 20, 1983 Claimant Williamson was informed of track deficiencies within the Keenesburg section

territory. One of the "red tag" (most serious) defects was a joint which registered a cross level warpot 1 7/8". At Mile Post 532.4 Claimant corrected the defect and notified Carrier that train traffic could resume at normal speeds. On June 25, 1983 Claimant Brito inspected the condition of the joint and surrounding trackage at Mile Post 532.4 and found no defects. The Organization argues that there is no evidence to prove that either Claimant Williamson failed to properly correct a "red tag" defect at MP 532.4 or that Claimant Brito failed to inspect track in a manner that would have prevented the derailment.

As to Williamson, the Organization insists that he repaired the track on May 24, 1983. Over 34 days later the derailment occurred. In the interim 15-18 trains daily operated over the repaired joint without incident. In the Organization's view, Williamson cannot be culpable for the derailment given the passage of time.

The Organization further states that Brito last inspected Mile Post 532.4 on June 25, 1983 and no defects existed at that time. Again, it asserts that from the time Brito performed his inspection on June 25 until the time the derailment occurred on June 29, the joint at the track was adversely affected by a large amount of train traffic, heavy rain and failed ballast. It argues that because a derailment occurred on June 28, 1983, Carrier assumed that Brito failed to properly perform his duties while inspecting track near Mile Post 532.4. However, it contends that no direct, positive evidence was revealed during the investigation that would

prove Claimant Brito's guilt. Accordingly, it asks that the claims for both Claimants Williamson and Brito be sustained.

Carrier, on the other hand, contends that evidence clearly proves that the derailment was caused by substandard track conditions as the result of failure of Claimants to properly perform their duties. It argues that testimony of Superintendent Kluthe supports Carriers conclusion that the track could not have been properly inspected by Brito on June 25. He maintains that the track conditions could not have deteriorated to such an extent only 4 days later. It denies Organization's assumption that a combination of fouled ballast, rain and heavy traffic could have caused such track conditions that would result in a derailment.

Likewise, Carrier asserts that testimony at the hearing concluded that Claimant Williamson failed to properly correct a "red tag" defect. Specifically, testimony showed that there was a defective joint. With defective ties, missing tie plates and spikes and battered rail ends.

Under these circumstances, Carrier argues that it properly found Claimants guilty as charged. Thus, for the foregoing reasons, Carrier asks that the claim be denied.

After a review of the record evidence, the Board finds that there is sufficient competent evidence to support Carrier's disciplinary action against Claimants. Although the Organization argued that there existed other possible explanations leading to the derailment, such was not proven during the hearing. Claimant Brito failed to properly inspect the track on June 25 in a manner

which would have prevented the derailment on June 29, 1983. Testimony at the trial revealed numerous defects that proved that the substandard track conditions were the direct cause of the derailment. Thus, the suspension imposed by Carrier is an appropriate penalty.

As to Claimant Williamson, we are persuaded that the fact that he had not been on the territory for over 35 days must be considered. On May 24, 1983 he repaired the defective joint conditions and returned the track to normal conditions. Additionally, since there were no incidents on that track for that period of time, the Board concludes that the discipline to Williamson be reduced to a 45 day suspension.


FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;


That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD: Claim sustained to the extent indicated in the Opinion.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

7/5/89