

PUBLIC LAW BOARD NO. 4338

PARTIES) UNION PACIFIC RAILROAD COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: That the discipline of thirty days deferred suspension imposed on Section Foreman L. D. Davis for his alleged violation of Chief Engineer's Instructions Bulletin CE-87-001-T be removed and the claimant's record cleared of the discipline.

FINDINGS: This Public Law Board No. 4338 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was notified to attend an investigation to develop the facts and determine his responsibility, if any, in connection with an incident which occurred at approximately 4:45 p.m., Wednesday, April 29, 1987 wherein L. D. Davis, while supervising surfacing equipment to tamp the joints on bolted rail of curve, MP 110.13 to MP 110.91 under a track and time permit issued 12:44 p.m. and extended to 2:45 p.m., failed to place a slow order over the work area, as required for continuous welded rail territory and ambient temperatures over 80 degrees fahrenheit, as was required by Chief Engineer's instruction Bulletin CE-87-001-T dated April 5, 1987 resulting in derailment of Extra 3636 East.

Pursuant to the investigation the claimant was found guilty and was assessed thirty days deferred suspension.

The Union objected to the letter of charges on the basis that they were not precise and that the Assistant Chairman of the Region did not receive a copy of the letter as provided for in Rule 48(C).

The Board has studied the charges and finds no fault with the charges. The Assistant Chairman should have received a copy of the charges, but the Board finds there is no error since he knew of the charges and was aware of them well in advance of the investigation.

Mr. Richard Ough, Roadmaster, Marysville SubDivision, testified that the limits between Menoken and Marysville where this problem arose were on his division, and the claimant worked under his supervision.

This witness testified that he received a phone call from the Dispatcher, and pursuant to that conversation, he returned to Onaga at MP 110.25 and found that a loaded coal train had derailed at that location. He testified there were nineteen car loads of coal derailed.

Roadmaster Ough further testified that the claimant had been going around the curve and squeezing up the joint ties, but he wasn't raising the track or lining on the track; he was just going around and each joint they'd tamp two, three or four ties. He testified the tamping began at approximately MP 110.20, and the claimant tamped approximately half a mile around this curve from east to west. He stated that to the best of his knowledge the derailment occurred near MP 110.25.

Roadmaster Ough then testified that he had given the claimant the CE Bulletin, CE 87-001-T, and also had talked to him and the rest of the section foremen of his territory about if they were tamping to be sure to keep an eye on the temperature, and if it started going up to place a slow order if it was needed.

This witness also testified that if the rail temperature went high enough and the ambient temperature was getting hot enough, they needed to place a slow order and make sure they had one on if they needed it there, as per the instructions of the CE Bulletin. Roadmaster Ough was asked to read the pertinent portion of the CE Bulletin. That Bulletin reads as follows:

"Tie Gangs, Surfacing and Lining Gangs, pr Production Track Liners Track that has been surfaced, lined or tied must be restricted to a maximum of ten mph until 9:00 p.m. on the day the work is accomplished if the ambient temperature reaches or exceeds 80 degrees fahrenheit (85 degrees fahrenheit Southern Region)."

The Bulletin cited by the Roadmaster contains a great deal more of instructions. Also on Page 9 of the Transcript Roadmaster Ough cited another portion of the CE Bulletin which he believed to be relevant.

D. C. Griffin, Division Engineer, testified that on the date in question he received a report of a derailment and proceeded to Onaga. He stated that on the curve there at approximately MP 110 there were 18, 19 or 17, depending on who counted, but officially they came up with 18 cars which were derailed out of an eastbound coal train.

Division Engineer Griffin stated that from the pulse tape, the train had been in the Duluth siding and came out of the Duluth siding, down the grade, and was traveling approximately 30 mph when it went into emergency.

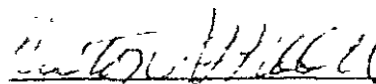
This witness stated that the temperature was rather warm that afternoon; local reports were that the temperature was between 90 and 94 degrees. He stated that he asked the claimant if he understood the instructions regarding the placement of the slow orders, and the claimant indicated he did.

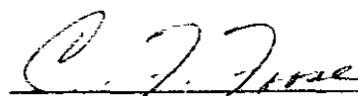
Mr. Griffin further testified that the claimant advised him that, being jointed rail around the curve, the work that he had done, in his opinion, did not require the track to be slow ordered. He stated that after talking to the claimant, he believed that the claimant was well aware of the surfacing out-of-surfacing requirements of the instructions because farther on west at approximately the curve of MP 113 they had tamped that and had placed a ten mph order in accordance with the current CE Bulletin.

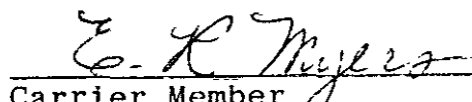
The evidence indicates that the claimant believed he was not working in continuous welded rail territory but was on bolted rail. Testimony of record indicates that bolted rail in that territory was to be treated as though they were CWR.

On the foregoing basis the Board finds no justification to set the discipline aside.

AWARD: Claim denied.


Preston J. Moore, Chairman


Union Member


Carrier Member

Dated: November 10, 1987