

PUBLIC LAW BOARD NO. 4402

PARTIES     )  
TO           )  
DISPUTE    )     BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
                              BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM

1.     The discipline, suspension for five (5) days, imposed upon Track Inspector R. G. Pearson for alleged violation of Rules A, 101 and 502(B) of the Burlington Northern Rules of the Maintenance of Way Department was without just and sufficient cause and on the basis of unproven charges (System File #4 Gr./GMWA 86-9-29).
2.     The Claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

OPINION OF BOARD

As a result of charges dated March 18, 1986, investigation eventually held on April 3, 1986 and by letter dated May 1, 1986, Claimant, a track inspector with approximately 16 years of service (six as a track inspector), was censured and suspended for five days for failure to comply with instructions from proper authority and to fully protect trains against any condition which interfered with their safe passage on March 13, 1986.

Inspection by a Missouri Department of Transportation inspector on March 12, 1986 revealed defects at mile post 14.50 which were repaired. MP 14.50 was in Claimant's designated inspection area. Claimant was not disciplined for the defects found on March 12, 1986. On March 13, 1986 Roadmaster L. J. Moloney, Assistant Superintendent M. A. Oliver and Claimant discussed the difficulties and possible solutions for the problems at MP 14.50. Claimant was instructed to look the area over for ways of resolving the problems existing at MP 14.50.

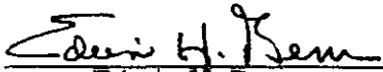
Later on March 13, 1986 Moloney went to MP 14.50 and discovered defects in two bars. Specifically, one bar was broken and the other was cracked. Moloney then issued a slow order to approaching trains. Thereafter, Claimant arrived at MP 14.50. Claimant had already inspected the area in his vehicle and had not yet discovered the defects. The instant discipline followed.

Substantial evidence supports the Carrier's conclusion that Claimant failed to comply with the given instructions and take the necessary protective action. MP 14.50 was an obvious problem area and Claimant was instructed to look the area over for possible solutions. In the course of his inspection, Claimant missed the cracked and broken bars. The Organization's arguments that Claimant could not see the defects from his vehicle and that the discipline was premature in that Claimant was in the process of performing the given instruction and about to begin a walking inspection when Moloney appeared at the location do not change the result. Given the type of defects that were found on the previous day in the same area and the nature of the discussion between Claimant, Moloney and Oliver earlier in the day and further considering the fact that MP 14.50 was a designated problem area, the record substantiates the Carrier's conclusion that something more was required than the initial effort undertaken by Claimant by the time Moloney arrived.


However, we find that the amount of discipline imposed was excessive. Although we have found that Claimant's inspection was less than adequate, under the given circumstances a five day suspension in addition to a censure may have been an overreaction to the fact that the Missouri inspector found defects near the same spot on the previous day which had been repaired. In these circumstances, we believe a censure to be appropriate.

**AWARD**

Claim sustained in part. The five day suspension and censure shall be reduced to a censure and Claimant shall be compensated accordingly.

  
Edwin H. Benn  
Neutral Member

  
E. J. Kallinen  
Carrier Member

  
P. S. Swanson  
Organization Member