
BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYES

"Organization"

VS.

CENTRAL VERMONT RAILWAY, INC.
"Carrier"

Award No. 11

STATEMENT OF CLAIM:

Claim of the Brotherhood that:

(a) The 30-day suspension assessed Light Maintenance Foreman G. E. Royea and Light Maintenance Foreman Helper M. Pyer was without just and sufficient cause and was based on unspecific charges of an alleged failure to perform duties.

(b) Claimants G. E. Royea and M. Pyer shall now be compensated for all lost wages, including overtime.

OPINION OF THE BOARD

Claimants, G. E. Royea and M. C. Pyer, are regularly assigned as Light Maintenance Foreman and Light Maintenance Helper, respectively, for Carrier. The duties of the Light Maintenance Foreman include the inspection of designated track and the performance of maintenance work as instructed by supervision. The position of Light Maintenance Helper is under the jurisdiction of the Light Maintenance Foreman, and the incumbent of the position must be qualified in the Book of Operating Rules and the FRA Inspection Rules. Both Claimants have long term service with the Carrier.

By letter from Engineer of Track/Structures C. E. Gura, dated January 25, 1988, Claimants were notified of discipline being assessed against them. The letter stated in relevant part:

In accordance with the current agreement between the Central Vermont Railway, Inc. and the Brotherhood of Maintenance of Way Employees, you are suspended from your duties as an employee of the Central Vermont Railway, Inc., for a period of (30) thirty calendar days; to begin January 26, 1988 and end on February 24, 1988, and report to your assigned location assuming your present duties on February 25, 1988.

This discipline is being assessed for your responsibility; for negligence in the performance of your duties by not detecting all unsafe conditions within the right-of-way limits of your assigned territory, and taking immediate action to correct any unsafe conditions, or report the condition to your immediate supervisor, or train dispatcher if necessary, as per instructions of the Carrier.

The charges against Claimants resulted from an inspection made on January 21, 1988 by J. Dulac, Project Engineer for the Carrier. Dulac conducted a high rail inspection of the portion of Carrier's track for which Claimants were responsible. Dulac made this inspection during a period in which no other trains were operating, as a main line derailment on the Swanton Subdivision had occurred on January 19, 1988. Dulac believed his inspection uncovered numerous FRA track and switch defects. After reviewing inspection reports submitted by Claimants for this portion of the track, Carrier determined that Claimants were negligent in the performance of their duties by not detecting the unsafe conditions within the right of way limits of their assigned territories and failing to take immediate action to correct any unsafe conditions or report these conditions.

By letter dated February 1, 1988, both Claimants requested a hearing concerning the discipline assessed. The hearing was held on February 18, 1988. Claimants were notified that the charges were sustained at the hearing and their suspension was confirmed. Subsequent appeal was made through various levels of the grievance procedure and declined at all levels.

The hearing before this Board took place on March 13, 1989. Claimants were present and represented by the Organization.

The Carrier contends that the allegations against the Claimants are supported by substantial evidence in the record and that the claim should therefore be dismissed. The Organization maintains that the Claimants are not guilty as charged and that the Carrier failed in its obligation to provide Claimants with a fair and impartial hearing on the property.

The Board has determined that the claim must be sustained in part.

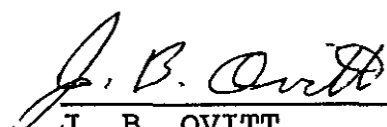
The Board is persuaded by the Organization that Claimants were not afforded an adequate opportunity to defend themselves against the charges in the hearing held on the property. Specifically, prior to that hearing the Claimants were not informed as to the specific incidences of negligence that they were alleged to have committed. Without such advance information, Claimants could not adequately prepare to provide a meaningful response at the hearing. Given this due process deficiency, it would be inappropriate to allow any suspension of the Claimants to stand. The Board has further determined,

however, that there does exist some evidence that Claimants were not fully performing all of their assigned responsibilities. As the Light Maintenance Foreman and Light Maintenance Helper have important and responsible positions with Carrier, the totality of the record of track problems uncovered by Project Engineer Dulac cannot be ignored. In these circumstances, the Board concludes that the appropriate outcome of this claim is that the suspensions of both Claimants be reduced to written reprimands.

AWARD

Claim sustained in part. Carrier shall reduce the suspensions assessed against both Claimants to written reprimands. As a further remedy, Carrier shall make both Claimants whole for any wages or benefits lost as a result of their suspensions.


W. E. LA RUE,
Organization Member

 4-12-89
J. B. OVITT,
Carrier Member


S. E. BUEHHEIT,
Neutral Member