

PUBLIC LAW BOARD NO. 7585

Case No. /Award No. 55
Carrier File No.: 10-15-0256
Organization File No.: C-15-D040-20
NMB 106
Claimant: R. Savala

BNSF RAILWAY COMPANY)
(former Burlington Northern Railroad Company))
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYEES DIVISION - IBT)

FACTS:

Claimant Savala, a track inspector, was issued a Level S, 30-day record suspension and three year probation for failure to protect a defective track condition, resulting in derailment.

CARRIER POSITION:

Roadmaster Cason Cole investigated the derailment and stated he found a gauge measure of 58 ½ when the maximum allowable is 58. He deemed this to be a prior wide gauge condition. Transportation, mechanical and engineering investigated together and jointly came to the conclusion that the track defect was what caused the derailment. In the Carrier's view this evidence is adequate to establish substantial evidence and meet its burden of proof. Cole was not definitive in identifying the milepost of the derail, saying the milepost would be "roughly the same" as milepost 11.8. TR12

ORGANIZATION POSITION:

The Organization notes a Mr. Erick Bettin was the track inspector from April to December of 2015, and he failed to inspect in November and December. The derail occurred on February 26, 2015. Claimant asserts he inspected a small segment where bolts needed to be replaced but did not walk the whole track. Claimant contended the "Chairman of the TY86E" told him the crew was traveling 16 mph instead of the 10 mph speed limit. He claimed a higher speed on a curve would

push the rail outward and widen the gauge, causing a derailment. The Organization further maintains Cole's inability to specify the mile marker of the derail undermines its entire case.

DECISION:

The point of derailment was not in controversy because shaved metal and marks in the snow identified the location and were photographed. Cole stated there were high spikes on the low side of the rail, meaning it was not properly secured. He explained that the plates were not upright under the tie, allowing the rail to lean outside under load. It is a progressive defect, he said, which could have been seen on a walking inspection. He denied that the conditions would have been caused by the derailment. "Um, if the, uh, if the rail is tipped out you might expect that to maybe pull a spike on the inside but not on the outside," he said. TR 19. According to Cole, defective ties tend to cause high spikes and all three ties looked plate cut. He concluded this was a sign of a defective tie which is a causative factor.

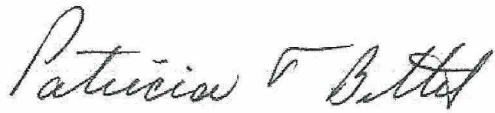
Claimant's assertion that the train was traveling over the speed limit is not substantiated anywhere in the record. Personnel attempting to identify the cause of a derail have no reason to ignore or evade a contributing factor such as speeding. The Board is therefore not persuaded that traveling over the speed limit was a factor in the derailment.

The Board is not persuaded that the weaknesses in the rail structure at the site of derailment were caused by the derail. Rather, the evidence indicates the wide gauge and high spikes pre-existed the derailment and were the cause of it. It is significant that three separate departments: transportation, mechanical and engineering, all agreed that the cause of the derail was a pre-existing track defect. This agreement is strong evidence that the Carrier's conclusion was well founded. The defects should have been identified by Claimant in his function as Track Inspector.

AWARD:

The claim is denied.

November 29, 2017; Park City, Utah



Patricia T. Bittel, Neutral Member



Zachary Voegel, Organization Member



Zahn Reuther, BNSF Member