

**PUBLIC LAW BOARD NO. 7585**

**Case No. /Award No. 81**  
**Carrier File No.: 10-18-0044**  
**Organization File No.: C-18-D040-3**  
**Claimant: T.D. Ray**

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**BNSF RAILWAY COMPANY** )  
**(former Burlington Northern Railroad Company)** )  
 )  
-and- )  
 )  
**BROTHERHOOD OF MAINTENANCE** )  
**OF WAY EMPLOYES DIVISION - IBT** )  
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**STATEMENT OF CLAIM:**

The Organization alleges that BNSF violated the Agreement when Claimant was disciplined for violating EI "Purpose of Track Inspections" for his failure to provide proper protection for a defective track condition which resulted in a track caused derailment on May 3, 2017 while assigned as a Track Inspector.

**CARRIER POSITION:**

On May 3, 2017 there was a derailment at the Denver terminal; Roadmaster Paz and Claimant Ray went to investigate. Claimant had inspected the area without reporting any defects.

Paz and Claimant, upon observing the bent switch rods and switch area initially thought the cause of the derailment was a run through switch. The movement of the plate exposed an area which looked fresh, indicating the movement had been recent. According to Paz, "The movement appeared to be fresh and occurred during the time of derailment." (TR 4) There were no anchor spikes on the plates though that would not have been a defect.

Paz subsequently watched a video of the derailment and noted the train did not run through the switch. He determined that the fasteners in the curve were insufficient and did not maintain gage. In his view, this was the actual cause of the derailment. The Point of Derailment (POD) was determined from examining the area of the derailment. The rail was shoved out going towards the switch.

Given this information, the Carrier determined that the cause of the derailment had nothing to do with the switch, but was a result of Claimant's failure to identify defects at the time of his inspection. Accordingly, it issued the discipline here concerned.

### **ORGANIZATION POSITION:**

The track inspection performed by the Claimant on April 10, 2017 revealed no defects at the location in question, and as the Organization sees it, the Carrier has not proven otherwise. Carrier Witness Paz testified that Claimant was well within the track inspection frequencies. Even though Paz was asked how many trains traversed this area of track between the track inspection on April 10, 2017 and the derailment on May 3, 2017, he was unable to provide this information, leaving this important question unanswered. Paz testified that from the footage, he could not actually see the POD, basically admitting that his "evidence" was inconclusive.

Paz did not bring his track notes to the investigation, creating a void in the evidence. The Organization contends the pictures offered of the area were woefully inadequate. The Carrier offered pictures of the spike plates and spikes moving on the outside rail but had no pictures of the inside spikes, which would have surely rolled up depending on the circumstances. Further, there were no pictures of the point where the train's wheels slid off the rail, that is, the point of derailment.

### **DECISION:**

The evidence in this case is persuasive in establishing that the immediate cause of the derail in question was track gage. However, the Carrier has failed to persuade us that this defect was the result of Claimant's neglect. Claimant was on schedule in his inspections. Three weeks had passed since the last inspection. The Carrier provided no information regarding the volume or speed of traffic over the rails during those three weeks.

Of more concern is the fact that there was conclusive evidence that a switch had been run through immediately prior to the derailment. The evidence was incontrovertible that this incident of the run-through switch was very recent, so recent it was initially thought to be the cause of the derailment. We cannot simply assume that the pressures applied in conjunction with a run through switch could not and did not compromise the condition of the rail itself. Yet, the Carrier failed to take into consideration this important intervening event between the time of Claimant's inspection and the derailment itself. No evidence is on record regarding the condition of the rail following the run through switch. It follows that substantial evidence of rules violation is lacking in this case.

**AWARD:**

The claim is sustained in full. The Carrier shall immediately remove the discipline from Claimant's record, with seniority, vacation and all other rights unimpaired and make him whole for all time lost as a result of this incident.

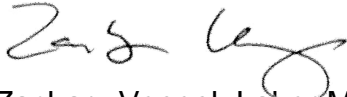
**ORDER:**

The Carrier shall comply with the terms of this Award immediately upon receipt of a fully executed copy thereof.

May 1, 2019



Patricia T. Bittel, Neutral Member



Zachary Voegel, Labor Member



James Rhodes, Carrier Member