

In the Matter of the Arbitration Between:

BURLINGTON NORTHERN SANTA FE

and

Case No. 10

Claim of L. D. Parrish

Formal Reprimand -

Failure to Prescribe

Proper Remedial Action

BROTHERHOOD OF MAINTENANCE OF WAY

EMPLOYEES DIVISION

STATEMENT OF CLAIM: Claim on behalf of Track Supervisor L. D. Parrish requesting removal of a Formal Reprimand with a one-year review period from his record with seniority, vacation and all other rights unimpaired, and that he be made whole for all time lost.

FINDINGS OF THE BOARD: The Board finds that the Carrier and Organization are, respectively, Carrier and Organization, and Claimant an employee, within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted and has jurisdiction over the parties, claim and subject matter herein.

The Carrier and Organization are Parties to a collective bargaining agreement which has been in effect at all times relevant to this dispute, covering the Carrier's employees in the Maintenance of Way craft. The Board makes the following additional findings.

Claimant has worked for the Carrier since March 7, 2005. In August 2011, Claimant was assigned to the Ward Industrial Spur of the Texas District, and was responsible for inspecting track at MP 25.5. On August 25, 2011, at approximately 5:00 p.m., there was a derailment which the Carrier attributed to a tight rail condition at MP 25.5. Claimant testified that he did not find any problems with the track when he last inspected it. The Carrier appears to assume that, if the accident happened, it must have been because there was a problem with the track and that Claimant was guilty of failing to detect it or have it repaired.

The Carrier convened an investigation at which the above evidence was adduced. Based on the record, the Carrier found Claimant in violation of Engineering Instruction 2.2.3 (Authority and Responsibility of Inspectors)

The Organization protested the discipline, which the Carrier denied on appeal. The Claim was progressed on the property on an expedited basis, up to and including the highest designated official, but without resolution. The Organization invoked arbitration, and the dispute was presented to this Board for resolution.

POSITIONS OF THE PARTIES: **The Carrier** argues that it met its burdens to prove Claimant's violations of the Rules and the appropriateness of the penalty. It asserts that the facts and testimony presented at the investigation make it clear that Claimant failed to get a portion of track repaired that he found misaligned during his inspection and that a derailment occurred at the location. BNSF contends that, at hearing, Manager Roadway Planning Bobby Curry testified that he talked to Claimant regarding the misalignment and Claimant admitted that he was responsible for supervising or inspecting that portion of track. BNSF contends that, when an employee admits guilt, there is no need for further proof.

With respect to the penalty, BNSF maintains that it properly considered Claimant's personal record, that the discipline imposed was lenient given the seriousness of the violation, and that leniency is not in the Board's discretion.

The Carrier urges that the claim be denied as without merit.

The Organization argues that the Carrier failed to prove a rule violation. As an initial matter, BMWE contends that the Investigation began one hour late despite its objections. It asserts that the Carrier's refusal to rule on an objection as serious as the start time of the Investigation is reason alone to set the discipline aside.

With respect to the merits, BMWE maintains that the evidence is that Claimant did not find any problem with the track and that there is, therefore, no evidence that he violated the Rules. It maintains that just because an engine went to the ground does not mean that a rules violation occurred. It points out, in addition, that Claimant is 47 years old and has six years of service, four as a Track Supervisor. It asserts that the discipline is extreme, unwarranted and unjustified.

The Organization urges that the Claim be sustained, that the Formal Reprimand and one-year review period be removed from his record with seniority, vacation and all other rights unimpaired, and that he be made whole for all time lost.

DISCUSSION AND ANALYSIS: EI 2.2.3 requires inspecting employees, when they "find[] conditions that make the track unsafe for trains moving at authorized speed, or find . . . deviations greater than those permitted by the FRA Track Safety Standards, the employee has the authority and responsibility to" make repairs, place temporary speed restrictions, remove track from service and/or complete

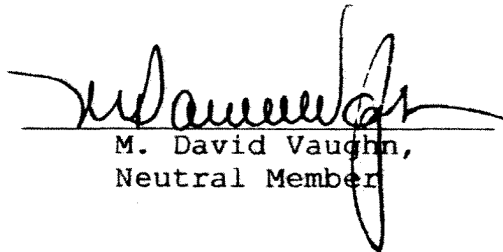
required reports correctly and on time. It is undisputed that, on the date in question, Claimant was a Track Supervisor, responsible for inspecting track at MP 25.5.


That being said, the Carrier presented no evidence that Claimant violated the Rule. Contrary to the Carrier's contention, Claimant only admitted responsibility for the track segment on which the derailment occurred. That is not synonymous with an admission of guilt for having violated the Rule. Such an admission would be, for instance, that he saw a kink in the track and did not get it repaired. Claimant specifically testified that he did not find any problems with the track when he last inspected it. The Carrier assumes, mistakenly, that, if an accident occurred, it must have been a Track Inspector's fault for failing to get it repaired. That is a presumption; however, it is not evidence.

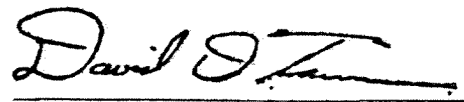
Given the nature and circumstances of the charges, the Board concludes that the Carrier's discipline was not reasonable. The Award so reflects.

AWARD: The claim is sustained. The Carrier failed to meet its burdens to prove Claimant guilty of the charges and to prove his Formal Reprimand to have been an appropriate penalty. The Reprimand shall be removed and expunged from Claimant's record for all purposes.

Dated this 5th day of April, 2013.


M. David Vaughn,
Neutral Member


Carrier Member
Ms. Samantha Rogers


Employee Member
Mr. David Tanner