

Special Board of Adjustment No. 1112

Parties to Dispute

Brotherhood of Maintenance of Way
Employees' Division/IBT

vs

Burlington Northern Santa Fe
Railway Company

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Case 97/Award 98

Statement of Claim

Appeal of discipline of a Level S thirty (30) day record suspension and a one (1) year probationary period assessed Claimant Christopher D. Mills on August 2, 2005.

Background

On April 6, 2005 the Claimant to this case, Christopher D. Mills was advised by the Division Engineer, Northwest Division to attend an investigation in order to determine facts and place responsibility, if any, in connection with his alleged failure to take proper remedial action on non-standard track conditions near MP 58.4 on the Carrier's Fullbridge Division while working as a track inspector on the date of April 3, 2005. According to the charge letter, the Claimant's actions resulted in the derailment of Amtrack train No 27.

An investigation of these charges was held on July 7, 2005 at Vancouver, Washington. On August 2, 2005 the Claimant was advised, as stated in the foregoing, that he had been found guilty as charged, and he was assessed discipline as stated in the Statement of Claim.

The discipline was appealed by the Claimant in accordance with Section 6 seq. of an arbitration agreement signed on July 29, 1998 between the Carrier and the Organization that created Special Board of Adjustment (SBA) 1112 under the authority of the National Mediation Board. In accordance with the provisions of that agreement this case is now properly before SBA 1112. The neutral member has been granted final and binding powers to issue an Award on this case based on the criteria outlined by the parties in Section 8 of the agreement creating SBA 1112, and in accordance with Section 3 of the Railway Labor Act.

Discussion

Testimony at the investigation held on July 7, 2005 at Vancouver, Washington by the manager of maintenance planning at Vancouver is that he was called about 7:00 AM on the morning of April 3, 2005 about a derailment of Amtrak train No. 27 at MP 58.4 on the Carrier's Fullbridge Subdivision. He was the one on duty that week-end to handle catastrophic events. He was the first senior engineering officer on the scene of the derailment. He did an assessment of the cause of the accident on basis of evidence he collected, and then reviewed his findings with various operating officers and mechanical people as they arrived on the scene. He also reviewed his findings with the division engineer in Seattle who testified at the investigation. The manager of maintenance planning concluded that the cause of the derailment was a wide gage that developed in

the track because of defective cross tie pads. His report is part of the record to this case.¹

The track in question is owned by the BNSF. Wide gage means anything over 56½ inches. When tracks spread beyond that threshold there is the possibility that a train will fall off the track. That is what happened in this case. There are photos in the record to show the location of the derailment, the wide gage that was the cause of the derailment and so on. The track lies on and is fastened to concrete ties. The rail sits on pads. In the instant case the rail wore through the pads which caused a deepening of the rail seat. Since the accident took place on a curve the wheels of the train cars applied pressure both downward and laterally on the rail. Because of the worn pads the rail tipped to the outside and the two rails then spread beyond the 56½ inch threshold. The train wheels then fell off the rail.

According to this witness, his investigation showed that some 18 of the concrete ties' pads were badly worn at the point of the accident. The pads that were worn out were placed on the ties in 1996. Testimony by this witness is that all of the pads at the location were badly worn which affected the other components, such as the clips, etc. holding the rails vertically. When the pads get worn as badly as the ones in question this causes the rail to "flex" which leads to wider gage. It had been determined, according to this witness, at an earlier date that the pads at this point were worn and that repairs would

¹The Report itself contains all vital information on the accident including the date, time and mile post where the accident occurred, and the line on which it occurred. It states also the class of track, the people involved, and the cost of the derailment as reported to the FRA. It states that the cause of the accident was "...T110 wide gage (due to defective or missing cross ties)....". See record Exhibit 8.

need to be made. But management's assessment of the condition of the track was that it would hold out until 2005 when not only the pads but the rails themselves were scheduled to be replaced at the point where the derailment took place.

Testimony by the division engineer of commuter construction in Seattle, Washington is as follows. His testimony generally corroborates that of the manager of maintenance planning about what caused the derailment.

But this witness also states that there was a report on the track condition in the area of the derailment on March 23, 2005 that was made by a FRA track inspector. That report states that "...MP 58.4 in curve lateral movement (2) locations..." could cause problems. That report was made by this inspector riding the same Amtrak train No. 27 that derailed at MP 58.4 on April 3, 2005. The report was initially sent to the road master whose name was Joe Guerrero. A second report on the track condition at the location where the derailment took place was a so-called "trouble ticket" (No. 40893) about the track at MP 59. This was also reported by Amtrak personnel. What happened, according to this witness, is that when this ticket was issued attempts were made to contact the office of the road master to contact the track inspectors responsible for MP 58.4 but they were at a meeting. So the Claimant to this case was contacted. According to this witness the Claimant went to the site and did an inspection, wrote a report which included the measurement he did and so on. The Claimant concluded, in his report, that the gauge was good, no slow order was to be enforced, and all other restrictions were to be removed, but specifically only for the location at MP 58.7. This was, of course, some short distance

from MP 58.4. There was also a third report issued as March 30, 2005 (trouble ticket No. 41003) by Amtrak personnel on Amtrak No. 28 stating that there were "...rough spots between Mile Post 58.4 to 58.7..." on the line in question in this case. The report states that attempts were made to contact a track inspector by the name of Nathan Herman. There is information also on in incident report made out by track inspector Hermann on March 30, 2005 on this section of track stating that engineering measurements were taken and no defects were found that were large enough to be of concern. There is also information made on a train on April 1, 2005 reporting rough track and a soft spot at MP 58.4. Lastly, there is a trouble ticket (No. 41176) indicating rough track at MP 58.6. On the front of this trouble ticket is a hand written note by the Claimant stating the he found "...spot by bridge and tamped it...", and then "...released for normal speed per (road master) Keith Morehead by phone 4/4/05..."²

All reports pertaining directly to the Claimant only indicate that he inspected part of the area under scrutiny in this case. None were found in the electronic system where track inspection reports are also filed. According to the division engineer's testimony, the information obtained on all of the inspection reports and trouble tickets, as well as the track measurement notes led him to believe "...that (the Claimant never) actually covered the area of concern that caused the derailment..."³ although, as will become clear, this

²Information on all of these documents can be found in record Exhibits 18; 22-25 *inter alia*. Note that one of the documents dealing with an inspection of the area alludes to an date of April 4, 2005. That is the date after the derailment. The issue of this 4/4/05 date is never really resolved in this case.

³Trans. @ p. 67.

does not appear to be correct. The Claimant inspected the same general location twice prior to the derailment which was in the close vicinity of the track he ended up inspecting. But he never inspected the specific MP 58.4 location.

In either case, according to this witness, after commenting on various Rules cited for the record at the investigation, it was his view that the Claimant was remiss for not doing an inspection of the entire area where trouble reports had been issued. He did an inspection but he did not do a thorough inspection of the whole area outlined in the earlier trouble reports prior to April 3, 2005.

This witness testified that an inspector is required to exercise initiative to also inspect the area around a reported trouble spot location, and not just the pinpointed spot where the trouble may have been reported. This would especially be true if the area involved a curve in the track.

It is far from clear that the Claimant was apprised of all of the reports cited here about concern with the location in and around MP 58.4. But, according to this witness, which is correct, the Claimant did know about at least two of the reports on the track conditions because his "...signature appears on a couple of the track measurement notes...". ⁴ The track measurement reports show that the Claimant did know about problems in the area of the derailment in late March and again on April 1, 2005.

Testimony by the Claimant at the investigation is as follows. He had been a track

⁴Information on this is found in record Exhibits 22 and 25.

inspector for some seven (7) months prior to the derailment. His territory did not cover MP 58.4 but was an adjoining one. The Claimant states that on March 28, 2005 he received a call from the assistant foreman at Bingen, Washington advising him that the latter received a report about a rough spot on the track. The Claimant states that he was told the rough spot was at 58.7 by a bridge. The other inspectors on the territory were tied up so he was asked to check it out. He did so by walking from MP 59 to MP 58.6. He found no defects, did measurements, and turned in a report. In that report he lifted any restrictions on travel on that part of the track.⁵ The Claimant states that he was again called while in his home area about problems around MP 58.7 because the road master could not get hold of the inspectors in that territory. He does not state otherwise in his testimony but the track measurement notes filled out by the Claimant on April 1, 2005 state that what he checked was MP 58.7. In short, the Claimant was called twice to the same general location with reports of rough track. He did not find any problems. As it turns out this was because he never checked the spot at MP 58.4 where the track was bad.

Findings

There is a procedural objection raised by the Organization in this case dealing with the statement of charges. According to the Organization, the charges lack specificity. A review of the statement of charges fails to persuade the Board that this objection has merit. The objection is dismissed.

⁵This Report is found in Exhibit 22.

With respect to the merits of this case, the union intimates that the manager of maintenance planning at Vancouver who signed off on the accident report was just offering his opinion. Obviously, this is true. But according to this manager, who worked in various capacities as a track supervisor for over 35 years, including being a road master many of those years, he had investigated many accidents before and it was his professional opinion, based on the evidence he found, that the cause of the accident was as he so stated in his report provided to the Carrier and to the FRA. This carrier officer states that he had seen the same thing happen on other occasions when derailments took place. On cross examination he states that there might be other theories of why the train derailed, but he found no evidence of this at the accident site.⁶ For example, although the rail broke because of the derailment, there was no evidence that the rail in and of itself was defective. It broke when the derailment took place because of forces ultimately related back to the defective pads between the track and the cross ties. This witness did not check the black box on the train itself which theoretically could have provided information on the derailment since he testified that this is not his bailiwick. In either case there were no signs at the scene of the derailment that it was caused by anything besides the widening of the gage. Nor was any alternative evidence to this effect provided by the operating personnel. The derailment was due to wide gage caused by defective

⁶The conclusions by this Carrier officer were confirmed by the Division Engineer who testified at the investigation. This latter officer states: "I agreed with the assessment that (was) made, due to the excessive abrasion in the rail seat areas, this allowed the rail to cant out" which caused the derailment. Trans. @ 82.

pads which caused the rails to spread apart. Further, this Carrier officer had consulted with operating, signal, etc. personnel and they provided no information on anything awry with the operating units when the train derailed. The train was handling okay, there were no broken wheels or axles, and the signal system was functioning properly when the derailment happened. All of this information was considered when the report on the cause of the derailing was filed. In view of the evidence of record, a Board such as this is in no position not to grant credibility to the report filed by this manager of maintenance planning who investigated the cause of the derailment.

The question in this case, of course, is not how or when the track gave out and tilted which resulted in the derailment. The only question here is whether the Claimant to this case as a track inspector is to be held responsible for not having detected this problem before the accident.

The manager of maintenance planning did testify that maintenance on the part of the track where the derailment took place had been deferred until 2005 with the proviso that this part of the track be watched by the track inspectors in the event that the wear might accelerate beyond the time frame for repairs and maintenance derived from that original inspection. This is why Carrier's have track inspectors. Rates of change in rail wear is variable. But people in the field are expected to keep a close watch on sections of track subject to future repairs. Once a rail wears through a pad, deterioration is normally rapid. According to the manager of maintenance planning at that point a derailment is waiting to happen.

The Claimant to this case was assigned to an area as track inspector which was west of the area where the derailment took place. But inspectors in the area in question were unavailable to make an inspection on certain days prior to the derailment so the Claimant was called to check on trouble orders that had been issued. According to division engineer this is common procedure. He did not know about all of the trouble reports that were filed, but he certainly knew about at least two of them.

This case is not about faculty inspection reports that the Claimant did submit about the specific spot where the derailment happened, but it is about whether he should have extended his inspection to the area where the pads were worn out and where the gauge widened when Amtrak No. 27 passed this spot on December 3, 2005 and since he had not done this whether he was in violation of the rules cited in this case?

A review of the full record in this case warrants the following conclusion. The Claimant ought to have been suspicious of the track conditions in the vicinity of MP 58.4 where the derailment took place because he was called back to that general vicinity twice before the derailment took place. He states that he made an inspection as far as 58.6 which was not far away. About the only thing that can be said is that in view of his limited experience as a track inspector it had apparently not occurred to the Claimant to have done an inspection of the track that at last extended to MP 58.4. Nor had a red light surfaced in his mind that, since there was a curve close to where the trouble tickets has been issued, that the wear factor on the track ought to have been higher at that point which merited further investigation. Apparently none of this occurred to him nor did he

conclude that a longer section of the track in and of itself merited further consideration and should have been inspected in view of the two trouble tickets that he was aware of.

The Claimant states that he had limited training as a track inspector although he did bid on the job. He bid was accepted on basis of his having qualified on the FRA Track Safety Standards. So whatever his training, which is always an ongoing matter in either case, he was qualified as a track inspector. There is nothing in the record to warrant conclusion, despite his level of training, that this employee was not a competent track inspector. The problem lay in the fact that he did not exercise the important, and intangible, aspect of his job which is to have taken the initiative to have made a more complete inspection of a length of track that was subject to a number of trouble tickets.

Obviously the operating crews were not making up their concerns. It ought to have occurred to the Claimant that he ought to have extended his search in view of multiple reports.


But whatever the cause of the Claimant's negligence in this case it cannot be encouraged by a forum such as this. It is not permissible for trains to derail simply because of a lack of thoroughness by track inspectors when reports of potential faulty track are filed multiple times about the same general area of track. Had the Claimant extended his inspection to the curve of track in question, which would have certainly been a logical thing to have done, he would assuredly have discovered what was found after the derailment took place. And this is that the pads between the rails and ties were so worn that they would not have sustained the passage of trains for long without the

gauge widening. Unfortunately the derailment of Amtrak No. 27 confirmed this.

The Rules at bar in this case are Rules 1.52 and 1.1.2 dealing with safety in general, and Rule 2.1 dealing with track inspection. The Claimant to this case was in violation of these rules by taking, apparently, such a narrow approach to his responsibilities as a track inspector that he lost sight of the context in which warning reports about track conditions had been filed, and by disregarding the fact that two reports had been filed about a stretch of track in the same general vicinity which included a stretch of curved track to boot. The Board is unable to sustain the claim in this case. To do so would encourage safety violations.

Award

The claim is denied.



Edward L. Suntrup, Chair &
Neutral Member

Date : 1/23/06