

**NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT**

BURLINGTON/NORTHERN/SANTA FE

AND

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES**

**Claimant:
Victor Sereda**

**CASE NO. 38
AWARD NO. 39**

On February 2, 2001 the Brotherhood of Maintenance of Way Employees ("Organization") and the Burlington Northern/Santa Fe ("Carrier") entered into an Agreement establishing a Special Board of Adjustment in accordance with the provisions of the Railway Labor Act. The Agreement was docketed by the National Mediation Board as Special Board of Adjustment No. 1112 ("Board").

This Agreement contains certain relatively unique provisions concerning the processing of claims and grievances under Section 3 of the Railroad Labor Act. The Board's jurisdiction was limited to disciplinary disputes involving employees dismissed, suspended, or censured by the Carrier. Moreover, although the Board consists of three members, a Carrier Member, an Organization Member, and a Neutral Referee, awards of the Board only contain the signature of the Referee and they are final and binding in accordance with the provisions of Section 3 of the Railroad Labor Act.

Employees in the Maintenance of Way craft or class who have been dismissed or suspended from the Carrier's service or who have been censured may choose to appeal their claims to this Board. The employee has a sixty (60) day period from the effective date of the discipline to elect to handle his/her appeal through the usual channels (Schedule Rule 40) or to submit the appeal directly to this Board in anticipation of receiving an expedited decision. An employee who is dismissed, suspended, or censured may elect either option. However, upon such election that employee waives any rights to the other appeal procedure.

This Agreement further established that within thirty (30) days after a disciplined employee notifies the Carrier Member of the Board, in writing, of one's desire for expedited handling of this appeal, the Carrier Member shall arrange to transmit one copy of the notice of the investigation, the transcript of the investigation, the notice of discipline and the disciplined employee's service record to the Referee.

These documents constitute the record of the proceedings and are to be reviewed by the Referee.

The Agreement further provides that the Referee, in deciding whether the discipline assessed should be upheld, modified, or set aside, will determine whether there was compliance with Schedule Rule 40; whether substantial evidence was adduced at the investigation to substantiate the charges made; and, whether the discipline assessed was arbitrary and/or excessive, if it is determined that the Carrier has met its burden of proof .

In the instant case, this Board has carefully reviewed each of the above-captioned documents prior to reaching findings of fact and conclusions.

BACKGROUND FACTS

Claimant, Victor Sereda, a Track Inspector, was charged with failure to properly inspect the Main Track located in Gladstone, Illinois, as well as failure to report or repair deviations from the Carrier's Standards, particularly loose bolts and a missing joint nail in a curve. These alleged charges occurred on September 11, 2001 while working as a Track Inspector. The record reflects that the duties of a Track Inspector are to inspect the following: the track, track structure, fence lines, ditches, bridges, culverts and look for any deviation from the normal operating conditions.

The Claimant has been censured for the violations of the following Rules:

Maintenance of Way Operating Rule 1.13, Accidents, Injuries and Defects:

Report by the first means of communication any accidents, injuries, defects in tracks, bridges, or signals or any unusual condition that may effect the safe and efficient operation of the railroad. Where required, furnish a written report promptly after reporting the incident.

The employee on whom the responsibility most naturally falls must assume authority until the proper manager arrives.

When an accident occurs at the road crossing, do not cut trees, weeds or make any changes to the scene until representatives from the General Claims Department have investigated.

Maintenance of Way Operating Rule 2.1 Engineering Instruction:

Purpose of Track Inspections

Track inspection has two basic purposes. First, it allows employees to detect, correct and protect variations from the BNSF track standards and to ensure safe train operations at authorize speeds. Second, it allows a planned program of repairs and improvements to ensure that employees are productive and use materials efficiently, perform at least minimum track inspections required in this section.

Qualifications of Track Inspector Rule 2.2.1:

Employees Qualified To Inspect Track for Defects

Individuals performing track inspections must be designated and qualified under the FRA Track Safety Standards. To be qualified to inspect track you must have at least one year experience in railroad track inspection or combination of track inspection experience training and track inspection. The training course may be college level program related to track inspection, demonstrate that you have, that you know and understand the federal requirements of the Federal Railroad Administration Track Safety Standards, can detect deviations from those requirements and can prescribe appropriate remedial action to correctly or safely compensate for those deviations. Note employees can prescribe appropriate remedial action only with the review of an employee fully qualified in supervising administrations or renewal. Be on the list of employees fully qualified to inspect track or defects which is maintained in Maintenance Manpower office in Kansas City.

2.2.3, Authority and Responsibility of Inspectors:

When inspecting employee finds conditions that make a track unsafe for trains moving at authorized speed or finds deviations greater than those permitted by the FRA track safety standards, the employee has

**the authority and responsibility to do one or more of the following:
make repairs, place temporary speed restrictions or move track from
service.**

An investigation was held on October 10, 2001 in Burlington, Iowa.

FINDINGS AND OPINION

The Carrier contends the common nexus of these violations is the Claimant's negligence of safety standards. Moreover, the Carrier asserts that the job of a track inspector is critically important because unsafe conditions create liability for the Company. That is, the Track Inspector is essentially the "lookout" for the Carrier. In particular, the Carrier points out that "loose joint bars, bolts missing and loose bolts in a joint on the low side of a curve" require immediate remedial action. In addition, the Carrier asserts that this track has a heavy traffic pattern, as the gross weight of one car loaded with coal weighs 100,000 pounds. At this location, the Carrier adds that twelve (12) to twenty (20) coal trains pass within one 24-hour interval. Based on all of the above, the Carrier requests that the Board uphold this censure of the Claimant for his negligent behavior.

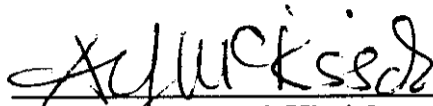
The Organization retorts that the Claimant properly performed his job on both September 10 and September 11, 2001. In response to the Carrier's argument of the Claimant's negligent behavior, the Organization asserts that the loose bolts could have gradually worsened due to the heavy traffic and loaded coal trains repeatedly traveling on the same area. That is, the Organization contends that the Carrier presented no credible evidence that it was the Claimant's negligence, his omission to act properly, which was the direct result of the loosened joint at 3:30 PM on September 11, 2001. In particular, the Organization points out that the Claimant is a long-term employee with a good work record. Moreover, the Organization adds that the discipline assessed is arbitrary, capricious and excessive. Based on all the above, the Organization requests that the Board rescind the censure and expunge his records.

After a careful review of the record, the Board finds that the concurrence of four safety violations, which occurred on September 11, 2001, the same day as the World Trade Center attack, is significant to note. In addition, the omission to carefully and closely inspect bridges and culverts on that particular day was critical to ensure the safety of the tracks. The record reflects that the Claimant had awareness, thus prior notice of the terrorist attacks earlier in the day. Therefore, the Board finds that particular attention should have been given to the tracks under these aforementioned circumstances.

Still further, evidence reveals that an emergency inspection was instituted as well to detect the presence of suspicious activity. In response to the Organization's argument that the loosened joints were a natural occurrence due to heavy traffic, the Board finds that it is more likely than not that it was the Claimant's omission to carefully find and correct this problem. That is, a loosened joint could occur gradually, but regular, close inspections could have prevented it. Although the Claimant is a long-term employee, the Board finds that censure is appropriate due to the aforementioned reasons. Based on the above, the Board finds that this assessment is not excessive, arbitrary nor capricious.

AWARD

The censure will be upheld. Accordingly, this appeal is denied.



A. Y. McKissick
Neutral Chair
SBA No. 1112

Dated: January 24, 2001