

BEFORE SPECIAL BOARD OF ADJUSTMENT 924

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CHICAGO & NORTH WESTERN TRANSPORTATION CO.

AWARD No. 197

Case No. 217

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The five (5) day suspension assessed Track Supervisor J. Zavala for his alleged lack of action which lead to a derailment on December 17, 1991 was without just and sufficient cause, unsupported and capricious (Organization File 8KB-4882D; Carrier File 81-92-60).
2. Track Supervisor J. Zavala shall be compensated for all wage loss suffered as a result of the suspension and shall have the discipline removed from his record.

FINDINGS:

Claimant J. Zavala was employed as a track supervisor on the Carrier's New Line Subdivision at the time of this incident. The Claimant was responsible for inspecting the track on a daily basis.

On December 17, 1991, the ANPRA train derailed at Mile Post 0.1M on the New Line Subdivision. It was determined that a wide track gauge due to rail spreading was the cause of the derailment. Subsequently, the Claimant was notified to appear for a formal investigation to determine his responsibility in this derailment.

At the hearing, the Claimant testified that he had performed his routine track inspection the day before the accident took place. The Carrier witness, Roadmaster

Foxen, testified that "this condition of the track spreading 1-1/2 inches or more over tolerance would not have occurred overnight but would have taken a longer period of time....the signs indicating wide gauge spreading were there if one took the necessary steps to inspect for them." The Claimant was found guilty and assessed a five-day suspension

The parties being unable to resolve the issue, this matter now comes before this Board.

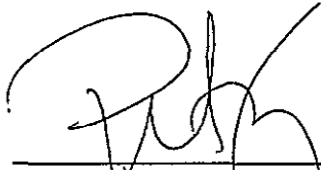
This Board has reviewed the evidence and testimony in this case and we find that the Carrier has not presented sufficient evidence to support the finding that the Claimant was guilty of being responsible for the derailment or for improperly performing his job. The Claimant testified that he inspected the track on the day before the accident, and that approximately 20 trains went over that location since he had last inspected. Other track supervisors had also inspected that track within the week previous to the derailment and none of them had taken any exception to the gauge in the curve.

This Board has stated on numerous occasions in the past that the Carrier must meet its burden of proof by presenting sufficient evidence in order to sustain discipline against an employee. As this Board has also stated in the past, the mere fact that an accident has occurred does not necessarily mean that the Claimant who has been charged with the wrongdoing is responsible for it. The Carrier must present more evidence than that which has been presented here.

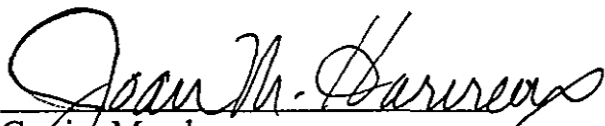
Since the Carrier has not met its burden of proof, the claim must be sustained.

AWARD

Claim sustained. The Claimant shall be made whole and the discipline shall be removed from his record.

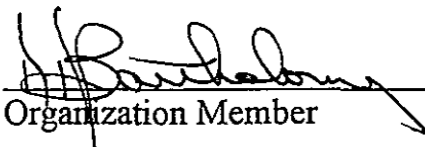


PETER R. MEYERS
Neutral Member



Carrier Member

DATED: 8/4/94



Organization Member

DATED: 8-3-94