

SPECIAL BOARD OF ADJUSTMENT NO. 956

BROTHERHOOD OF MAINTENANCE)	
OF WAY EMPLOYEES)	
)	AWARD NO. 143
and)	CASE NO. 143
)	
NEW JERSEY TRANSIT RAIL)	
OPERATIONS, INC.)	

STATEMENT OF CLAIM:

The Organization requests that the discipline (60-day suspension and disqualification from all foreman and assistant foreman positions for one year) assessed to Mr. G. Quinones be expunged from his record, and that he be made whole for all financial losses suffered in connection with this discipline.

FINDINGS:

Special Board of Adjustment No. 956, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

The Claimant is regularly assigned as the incumbent on an FRA track foreman's position. In that capacity, it is Claimant's responsibility to inspect and detect track irregularities. He is a long-term employee with a good service record.

On Sunday, February 11, 2007, Claimant accepted an overtime opportunity in the capacity of foreman in charge of a gang performing the replacement of the right hand switch point and stock rail at Ridgewood Junction. The Claimant and another foreman, J. Horner, were working under the supervision of Track Supervisor D. Berger. After a few hours, Supervisor Berger left the job site, leaving the Claimant and Foreman Horner in charge.

Following the installation, Foreman Horner measured the track gage and told the Claimant that it was at 56 inches. NJ Transit's standard gage at that location should have read 56 1/8 inches, but the Claimant determined that there was a quarter inch "push" or latitude between the heel block and the stock rail. On that basis, he concluded that the gage was acceptable. The Claimant concededly did not examine the gage at any other point of the switch.

On February 21, 2007, at approximately 7:25 a.m., Train 1252 derailed at Ridgewood Junction on Carrier's main line. There were no injuries, but extensive damage was incurred. An inspection showed that the cause of the derailment was that the track gage at the 5B switch located at the Ridgewood Interlocking was not in compliance with the minimum standard. The gage measured at the heel block of the switch point – the point of derailment -- was found to be 54 3/8 inches, well below the minimum allowable track gage of 56 1/8 inches. It was further determined that the cause of this condition was the result of an improperly installed right hand switch point by NJ Transit track forces on February 11, 2007.

Claimant was removed from service and charged with a violation of Carrier's requirements and standards for track gage and failure to perform his duties in accordance with Carrier safety rules and procedures. An investigative hearing was held on March 21, 2007. At the hearing, the Claimant disclaimed any accountability for the incident, stating that it was not his responsibility that day to check the track gage. Claimant testified that he relied upon Foreman Horner, who is also an experienced foreman, to accurately read the gage. Based on his testimony, the Organization contends that the assessed discipline was not commensurate with the relatively minor degree of culpability that could properly be ascribed to the Claimant.

Carrier contends that the charges were proven and the discipline was fully consistent with the misconduct established at the hearing.


The Board has carefully reviewed the lengthy record in this case. Stripped to its essentials, we find that substantial evidence exists to support the conclusion that the Claimant violated the charges directed against him. The fact that the other foreman may have been derelict in his duties does not exonerate the Claimant. As a track inspector, the Claimant knew the significance of the tight gage reading. It should have alerted him to check all aspects of the installation, including the gage on the straight side of the switch point and the turn out side of the switch point. If the Claimant had performed these fundamental duties, he would have determined that the gage at the heel block measured only 54 3/8 inches.

It was part of the Claimant's responsibility to ensure that the switch point was installed in compliance with the Carrier's standards. He failed in that responsibility. Concluding as we do that the charges were proven, we next turn our attention to the reasonableness of the penalty imposed. Absent a finding that the Carrier has imposed discipline in an arbitrary or capricious manner, the Board will not interfere with the Carrier's judgment.


In the instant case, the proven misconduct constituted a very serious offense and it had significant consequences to the Carrier's operations. In lieu of discharge, Carrier exercised leniency -- in light of the Claimant good record and years of service -- and imposed a disciplinary suspension and a disqualification. There is no basis for the Board to conclude that a different or lesser penalty was warranted. Accordingly, the claim must be denied.

AWARD

Claim denied.



Carrier Member

ANN S. KENIS
Neutral Member

Organization Member

Dated this 24th day of June, 2008.