

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 24254
Docket No. 43856
93-1-92-1-C-4571

The First Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
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(Chicago and North Western Transportation
(Company

STATEMENT OF CLAIM:

"Engineer J. Roesch, Sr., Eastern Division (Chicago Freight Terminal) requests that this Board expunge the five days discipline that has been issued to claimant. Furthermore, claimant also requests that this Board compensate him for all time lost including time spent at the investigation. Claimant had been investigated on January 16, 1991 on the following charge:

'Your responsibility for your failure to properly handle your train while working as engineer on assignment YYE24 at approximately 8:15 p.m. December 17, 1990, when due to slack action in your train, TTGX 962332, TTGX 158328 and ETTX 950255 were derailed at Proviso Terminal.'"

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

After a disciplinary Investigation, the Carrier found Claimant, an Engineer with twenty years of seniority, guilty of mishandling his locomotive while operating his yard assignment at Proviso Yards on December 17, 1990. More specifically, the Carrier contended that Claimant's braking technique was deficient which caused slack to forcibly run through the cut of cars behind his engine resulting in a three car derailment.

After reviewing the Investigation record, this Board finds that there were at least six plausible and reasonable explanations, aside from the Claimant's alleged culpability, for creating slack in this particular consist of cars. In addition, the Carrier failed to marshall sufficient evidence showing that Claimant created the slack or that he misapplied the brakes. Since there were other reasonable explanations that would explain the cause of the derailment aside from the Carrier's conclusion, the Carrier disciplined Claimant based on mere speculation and without proffering substantive evidence to support its finding of guilt.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 1st day of November 1993.