

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25115

Docket No. 44685

00-1-98-1-U-2000

The First Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Locomotive Engineers
(Union Pacific Railroad Company (former Chicago
(and North Western Transportation Company)

STATEMENT OF CLAIM:

"Claim in behalf of J. L. Ross, Union Pacific Railroad former Chicago and North Western Transportation Company, for compensation for all lost time, including the time spent at the investigation and that this incident be removed from claimant's personal record when he was investigated on the following charge:

"for derailment of cars TTQX 903232, UP 273168 and TTPX 81740, resulting in damage to cars and track while performing service as crew member of NPPRCR-15 at approximately 3:40 p.m., March 17, 1997 at Proviso Yard."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The Claimant was an engineer on an assignment operating in the Carrier's Proviso Yard when a derailment occurred. After operating from Clinton, Iowa to Proviso, the crew made a setout on different tracks in the course of putting their train away as instructed by the tower SYO. They set out a block of 32 cars (28 loads and four empties) on 44 Main, made a setout at other locations in the yard and returned to 44 Main for the 32-car block. They coupled up to these cars using the Yard two lead and six Main for headroom, and doubled to a cut of 35 cars (31 loads and four empties) on Track 321. They then proceeded to shove the 67 cars westward. As the cars started to move through a turnout, the conductor, who was protecting the move, noticed rail tipping under the cars and stopped the move. Upon further inspection it was discovered that cars TTPX 81740, UP273168, and TTQX 903232, the 29th, 30th, and 32nd cars from the engine, respectively, were off the rail.

In connection with the incident the Claimant was directed to attend an Investigation. Subsequent to the Investigation the Carrier imposed the discipline now on appeal to the board. The basis of the discipline was that the Claimant "used excessive throttle while engineer on NPPRCR-15."

It is the conclusion of the Board that the discipline cannot stand. This is because the Carrier failed to call several witnesses requested by the Claimant's representative. This can be viewed either as a failure of proof or a failure to provide a fair Hearing.

For instance the Carrier's main witness, who was remarkably unfamiliar with the exact track conditions in the vicinity, testified he relied on information given to him by another manager that the track conditions were good. Not only is this a problem because it is hearsay, it is a problem because the condition of the track was sharply disputed by the Claimant. He said the track was "garbage" with loose spikes sticking in the air as well as dips in the track. He also claimed there was too sharp of a turn. This last assertion relates an assertion developed elsewhere in the record that the yard was constructed in 1927 when the normal railroad car was 40 feet long, whereas many cars now are 100 feet long.

It is entirely plausible that the poor track condition was a significant factor in the derailment. When it became apparent that the main witness relied on someone else for his Investigative assumption that the track conditions were good, it was perfectly reasonable to request the presence of this person at the Hearing. By not granting the request, the Hearing Officer left great doubt about the whole of the facts and

circumstances as well as denying the Claimant the fair and impartial Hearing to which he is contractually entitled.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 30th day of March, 2000.