

Award No. 452
Case No. 452

PUBLIC LAW BOARD NO. 5383

BROTHERHOOD OF LOCOMOTIVE ENGINEERS)	
)	
vs.)	Parties to Dispute
)	
UNION PACIFIC RAILROAD COMPANY)	
(FORMERLY CHICAGO AND NORTH WESTERN)	
TRANSPORTATION COMPANY))	

STATEMENT OF CLAIM:

BLE UP/CNW General Committee of Adjustment requests the Board to consider and authorize the claim of Engineer P. C. Tucker, Des Moines District, for removal of ten (10) days actual suspension from claimant's service record and compensation for all time lost including the time spent at the investigation on September 7, 1979 on the following charge:

"Your responsibility in connection with derailment and damage to equipment at approximately 4:05 PM, August 21, 1979 at MP 60.6 while you were members of Extra 918 North."

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that the Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

As the result of a disciplinary investigation, Claimant Engineer was found to have had responsibility in connection with

derailment and damage to equipment while operating train Extra 918 North. He was disciplined with ten (10) days suspension.

The record indicates that Claimant brought his train to a slow speed stop and when the train next started to pull it was discovered that the tenth (10th), eleventh (11th) and twelfth (12th) cars from the engine had derailed. At the investigation, a Carrier officer testified that the cause was slack action since there were perpendicular lateral marks across the top of the rail where the wheels dropped off outside the rail.

The conductor on the crew testified that the marks were inconsistent with a slack action derailment since the marks went from the inside from north to south and the train was going north. He also stated the track conditions were poor at that location and the accident was caused by rails turning over due to bad ties. Two (2) members of the train crew testified there was no excessive slack action, and the third (3rd) was not questioned nor did he volunteer any information concerning slack.

The Board has carefully reviewed the record in this and we conclude that the claim must be sustained because the evidence does not clearly establish Claimant's responsibility for the incident. The Carrier officer's testimony concerning the marks across the rail make sense; however, the Conductor testified that the direction was wrong, which is in opposition to the

concept. The result might be different if the Carrier had submitted testimony contradictory to the Conductor's statements or explained in further detail. The Carrier also did not furnish any persuasive rebuttal to the allegations re track conditions.

AWARD

Claim is sustained.

ORDER

Carrier is ordered to make this award effective within thirty (30) days of the date shown below.

C. R. Wise
Carrier Member

B. H. Linn Arthur
Employee Member

Deely
Chairman and Neutral Member

Dated. June 5, 1997