

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISIONAward No. 24196
Docket No. 43860
92-1-C-4572

The First Division consisted of the regular members and in addition Referee Harvey A. Nathan when award was rendered.

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

STATEMENT OF CLAIM:

"1. Engineer J. W. Marek, Sr., Eastern Division (Illinois District) requests that this Board compensate him for all time lost including time spent at the investigation and furthermore remove the discipline entry from his record stemming from investigation on March 20, 1991.

Claimant has been investigated on the following charge:

'Your responsibility in connection with your failure to properly perform your duties as Locomotive Engineer of train NPPRA, resulting in derailment and damages to ETTX 950142, ETTX 902728, SP 517392, UP 77883, ACFX 27771 and ITLX 40168 on March 17, 1991 at approximately 12:35 p.m. at Proviso yard 9 while yarding your train.'

This request is premised on BLE Rule 41, copy attached as Employees' Exhibit A. Copy of transcript attached as Employees' Exhibit B."

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 employes 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 thereon.

The Claimant is assigned to freight pool service between Clinton, Iowa, and Chicago (Proviso Yard). On March 17, 1991, at approximately 12:35 p.m., Claimant had arrived at Proviso with 82 loads and 19 empties. Several of the cars were auto rack and high cube cars, 90 feet in length. As Claimant was in the process of yarding his train he was suddenly advised that he had derailed. He then applied the emergency brakes ("dumped the air") which caused an additional five cars to leave the track. The resulting damage to equipment was in excess of \$25,000. Claimant was charged with improper performance of his duties as engineer, found guilty, and assessed a ten day suspension. The Organization, asserts that there was no evidence that the Claimant was at fault. It contends that the derailment was most likely caused by the structure of the Yard, in that Proviso was built before the new long cars, and the short turnouts cause single wheels to jump the tracks.

The following facts are not in dispute. Upon arrival at Proviso, Claimant was directed to yard his train on Track 27, doubling the balance to Track 26. As he was proceeding to Track 27, the Conductor detrained and advised Claimant via radio how many car lengths remained to clear the lead. Claimant testified that he only used enough power to start the train moving and that he was probably proceeding at about 2 miles an hour. At the point where there were four cars left to clear, the engines were in idle. At that point Claimant began to stop the train. He testified:

"And that's when I felt a little bit of a run in. I didn't think nothing of it because nobody said nothing, the train did not go into emergency. The next thing I heard was I'm in the clear and somebody said that I was on the ground and that's when I spiked the train.

Carrier representatives investigated the derailment and found nothing wrong with track or crossovers which would have caused the derailment and subsequent damage. The Carrier concluded that the way in which claimant applied the brakes caused the slack to run through the cars with such force that the cars near the end of the train derailed in accordion fashion.

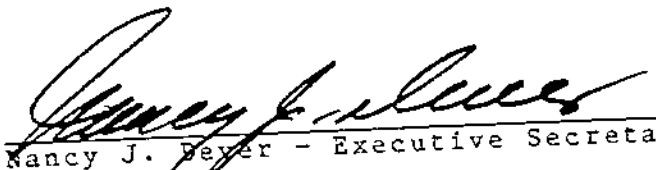
Although it is possible that the Claimant contributed to the derailment by the manner in which he stopped the train, there is no evidence of this, and the Carrier's conclusion in this regard is more speculation than based on fact. Against this the Organization offered evidence of other one wheel derailments in the same area of the Yard involving long cars on short turnouts. Additionally, the Assistant Terminal Manager testified that he questioned the Brakeman and Conductor who stated that they did not hear any slack. The Carrier did not produce anyone who saw the derailment although it was first reported by the crew of another train. In the absence of evidence of carelessness or negligence the claim must be sustained. The discipline shall be expunged from the Claimant's record and he shall be compensated for all time lost.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1992.