

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22625  
Docket Number BY-22351

James F. **Scearce**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employes**  
(The Chesapeake and Ohio Railway Company  
(Southern Region)

STATEMENT OF CLAIM: "Claim of the System **Committee** of the **Brotherhood**  
that :

(1) The disqualification of Mr. John **J. DuFour** as a track inspector was without **just** and sufficient cause and on the basis of unproven charges (System File **C(So)-D-343/MG-1703**).

(2) The benefits **and** privileges of Agreement Rule **21(e)** **shall now be** extended to the claimant."

OPINION OF BOARD: There is no disagreement in the basic facts of this dispute. Claimant was employed **as** a Track Inspector. **On September 27, 1976 while working in that capacity, he** inspected the condition of the rail on a curve at **MP406**, at Ames, West Virginia. **On September 29, 1976 AMTRAK Train No. 50** derailed at East **Sewell**, West Virginia, and during the course of investigation of the **derailment**, it was determined that it had its **origin** at the curve at **MP406** where, **from** the physical **evidence** found at that time, the gauge of the track on the curve was wide.

**Claimant** was required to attend a hearing **on October 13, 1976 in connection with the** charge:

**"You are charged with responsibility in connection with derailment of baggage car 1372 of Amtrak Train No. 50 at Ames, west Virginia at approximately 6:28 A.M., September 29, 1976."**

As a result of the testimony developed at the hearing, claimant was disciplined by being "disqualified as Track Inspector, effective with **close of business Friday, October 22, 1976**".

From our review of the **testimony** in the hearing record and from our evaluation of the arguments **presented** by **both** sides in this **dispute, we cannot conclude that claimant is completely blameless.**

However, based upon the complete record which is before us, **including** a total absence of **any** record of previous **infractions** by the claimant, we cannot find support for a permanent disqualification.

**Therefore**, it is **our** decision that Claimant **DuFour** should have his **Track** Inspector seniority reinstated so as to permit **him** to use such rights on **subsequent** **Track** **Inspector** positions which become available. **All** monetary portions of this claim are denied.

**FINDINGS:** The **Third** Division of the Adjustment Board, upon the whole record **and all the** evidence, **finds** and holds:

That the parties waived oral hearing;

That the Carrier and the **Employees involved** in this dispute are **respectively** Carrier **and Employees within** the meaning of the Railway Labor Act, **as approved June 21, 1934;**

That this Division of the Adjustment **Board** has jurisdiction over the dispute **involved herein;** and

That the **discipline** was **excessive.**

A W A R D

Claim disposed of as per Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: L. W. Pauls

Dated at Chicago, **Illinois**, this 9th day of **November 1979.**

