

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32306
Docket No. MW-32904
97-3-96-3-263**

The Third Division consisted of the regular members and in addition Referee Jonathan S. Liebowitz when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Seaboard Coast
(Line Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The thirty (30) day suspension assessed Foreman R. S. Grissette for alleged failure to properly gauge track on the Dothan Subdivision on August 3, 1994 was without just and sufficient cause and based on an unproven charge [System File 32(1)(95)/12(95-0079) SSY].**
- (2) As a consequence of the aforesaid violation, Foreman R. S. Grissette's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered including fringe benefits.”**

FINDINGS:

The Third 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.

Claimant, a Track Foreman in the Carrier's Track Subdepartment, was assigned on August 2, 1994 by Roadmaster R. Traywick to perform necessary maintenance work to bring track back to proper gauge at two specified locations on the Carrier's Dothan Subdivision. Claimant and Trackman L. Cogman performed the work on August 3. On August 9, Roadmaster Traywick, accompanied by Assistant Roadmaster L. Henderson, again hi-railed the Dothan Subdivision and found a gauge deficiency at two locations. The next day, as instructed by Traywick, Claimant returned to those locations and performed the necessary repairs to bring the track into proper gauge.

By letter dated August 18, 1994, Claimant was charged with violation of Carrier Operating Rule No. 501 which states in part: "Employees must not be ... careless or incompetent" and of CSX Transportation Engineering Department Maintenance Rule 2102 which states that "Track Foremen will be responsible for the safety and quality of work performed under their supervision, and shall do no work that will interfere with the safe passage of trains, except under proper protection," and with a violation of that Department's Maintenance Rule 2107 which states that [Track Foremen] "... [m]ust see that all work done under their supervision is performed in a quality manner conforming to standard practice and are responsible for seeing that the track upon which their forces have worked is in a safe condition prior to the passage of trains and on the completion of work."

An Investigation was held on September 26, 1994. On October 13, 1994, Division Engineer L.S. Romaine notified Claimant that upon review of the transcript, the facts support and confirm the charges and that Claimant failed to perform his assigned duties in a quality manner in accordance with CSX and FRA Standards, and that due to the poor quality of the work initially performed, Claimant had to return to the locations and correct the conditions. Romaine's letter also advised Claimant that review of Claimant's personal file shows incidents of a similar manner occurred in the past resulting in various forms of discipline, and that Claimant was assessed an actual 30-day suspension, October 17-November 15, 1994.

The record shows that the deficiencies charged to Claimant did in fact occur. The Organization argues that the record is procedurally deficient in that the discipline was imposed by Romaine while the Investigation was under the supervision of Conducting Officer M.T. Cumbea. Our review of the record does not reveal a demonstrated contractual basis for that contention and we find it to be without merit.

The Organization argues that the condition found on the August 9 track inspection could have been caused by the passage of trains over that section of track in the intervening six days and that the Carrier failed to prove that it resulted from improper performance of maintenance duties by Claimant. Claimant testified in the Investigation that there would have to have been train traffic over that section of track. His co-worker, Trackman Cogman, did not know whether that had in fact occurred. Roadmaster Traywick testified that he did not believe that that was possible in this case because the timber in the two locations was sufficient so that if done properly, the gauge would have held. The record made on the property does not support a conclusion that the subsequent condition of the track was caused by passage of trains, although that is a possibility. But it has not been factually demonstrated to have happened.

The record also shows an issue as to measurement of the track with a track gauge versus measurement with a tape line. Both were used in the various measurements in issue. The Board finds that issue to be indeterminative in this case.

The Organization contends that the discipline imposed was excessive in light of Claimant's personal record because, according to the Organization, that record contains some ten letters of caution or demerits which are not disciplinary in nature. We find that that issue was not raised on the property and therefore we may not consider it. The Organization did take exception on the property to an April 13, 1992 letter to Claimant charging a violation of two CSX Transportation Maintenance Rules, contending that the Investigation was recessed and never reconvened. The Organization maintains that that charge letter should have been removed from Claimant's personal file. The Board finds that the record lacks sufficient information to make a determination on that issue, assuming that it is part of the Statement of Claim.

While the record could be viewed as raising a question as to the degree of discipline imposed, the 30-day actual suspension, the Board notes that the infractions had implications for safety, a primary concern for Carrier and Organization, and that the imposition of the disciplinary penalty was within the proper discretion of the Carrier and was not arbitrary, capricious or discriminatory.

Accordingly, the record demonstrates no basis for the Board to overturn the decision reached by the Carrier.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 13th day of November 1997.