

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22625
Docket Number MW-22351

James F. Searce, 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. Paul

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

