

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36009
Docket No. MW-35070
02-3-98-3-811**

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(I & M Rail Link, LLC**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [ten working day suspension, loss of foreman seniority and a one year restriction from applying for a foreman position, which activated a five day deferred suspension and a thirty day deferred suspension (total of forty-five day suspension)] imposed upon Foreman D. L. Carey for alleged violation of I&M Rail Link General Code of Operating Rule 1.6 and CP Safety Handbook General Rule O and Rule 747 concerning verbal report of track inspection on June 18, 1998 was arbitrary, capricious, disparate, on the basis of unproven charges and in violation of the Agreement (System File D-30-98-450-02-IM).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to the foreman position with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.”**

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.

Because of heavy rains on the afternoon of June 18, 1998, the Claimant's Roadmaster directed him to inspect trackage for washouts. The Claimant later reported that he had inspected some trackage from the road, but when his truck got stuck he inspected the remainder of the trackage on foot. He did not report any damage as a result of the rain.

The following day, a contractor reported that approximately 100 feet of track had been washed out on the trackage the Claimant said he had inspected on foot. When later contacted, the Claimant explained he had looked at that particular trackage from an overhead bridge.

The Claimant was subsequently directed to attend a formal fact finding session at which he was charged with failing to perform a track inspection and making a misleading and untruthful report concerning his inspection. Following the fact finding, the Claimant was issued a ten day suspension, which additionally required him to serve two previously deferred suspensions. The Claimant was also disqualified as a Foreman and prohibited from exercising his Foreman rights for one year.

It is undisputed that the Claimant failed to perform an inspection in accordance with the Rules of the Federal Railroad Administration. These Rules require that track inspections be made on foot or by riding over the track in a vehicle at a speed that allows proper visual inspection of the track. Inspection from an overhead bridge is not in compliance with these Rules.

Although the Organization argues the washout might have occurred subsequent to the Claimant's inspection of the track, we find that to be immaterial. The Claimant was charged with not conducting a proper track inspection, and there is substantial evidence in the record to support that charge. Furthermore, he led the Roadmaster to

believe that a proper track inspection had been conducted. Thus, he gave false and misleading information about the work he performed. Under the circumstances, we find that the Claimant was properly subject to discipline. In light of the nature of his offense, as well as his past record, the discipline imposed by the Carrier was neither arbitrary nor excessive. The Agreement was not violated and the claim must be denied.

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 16th day of April, 2002.