

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42815  
Docket No. MW-42923  
17-3-NRAB-00003-150053**

The Third Division consisted of the regular members and in addition Referee Erica Tener when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -  
( IBT Rail Conference**  
**PARTIES TO DISPUTE: (**  
**(Soo Line Railroad Company (former Chicago,**  
**( Milwaukee, St. Paul and Pacific Railroad Company)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The discipline (dismissal) imposed upon Mr. J. Hess by letter dated September 5, 2013 for alleged violation of ‘. . . General Code of Operating Rules 1.1.3 - Accidents, Injuries, and Defects; Engineering Safety Rules Rights and Responsibilities; Red Book of Track Requirements 1.1.0 - Requirements in connection with charges on a notice of investigation dated August 12, 2013 was on the basis of unproven charges, arbitrary, capricious, excessive and in violation of the Agreement (System File D-57-13-445-07/8-00548 CMP).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Hess shall be reinstated to service with seniority and all other rights unimpaired, his record cleared of the charges leveled against him and he shall receive ‘. . . all lost wages, straight time, overtime, paid and non-paid allowances and safety incentives, expenses, per diems, vacation, sick time, health & welfare insurance, dental insurance, supplemental insurance, and any and all other benefits to which entitled \*\*\*.’”**

**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.

By letter dated August 13, 2013 Claimant was instructed to attend an investigation hearing on August 22, 2013 for the purpose of developing pertinent facts in connection with an alleged incident that resulted in the C&M Sub MP 85.4-83.4 Main #2 being out of service due to a defective track condition on August 2, 2013. In a letter dated September 5, 2013 the Claimant was notified that he had been found guilty of violating GCOR Rules 1.1.3 – Accidents, Injuries, and Defects, Engineering Safety Rules Rights and Responsibilities and Red Book of Track Requirements 1.1.0 – Requirements and was to be dismissed.

On July 31, 2013, the Claimant was assigned to work as a Track Inspector. He is responsible for weekly inspections of 55 miles of double main line track, numerous sidings, yard tracks, crossovers, and switches including the area of Mile Posts 84.7 through 85.1. Several days later (August 2), a Train Evaluation Car (TEC) went through this territory and found two track defects (wide gauge) at MP 84.8 and 85.1. The Claimant did not observe or report these defects.

Roadmaster Mark Steuernagel and the Claimant testified during the investigatory hearing. Mr. Steuernagel presented records showing the Claimant completed training in January 2013 about GCOR 1.1.3 which refers to, among other things, the responsibility to report all defects in tracks, bridges, or signals. Mr. Steuernagel testified this rule was violated by the Claimant when he failed to report wide gauge incidents between MP 84.7 and 85.1. Mr. Steuernagel presented evidence that the Claimant received training on the Engineering Safety Rules, Rights and Responsibilities and the Red Book Track Requirements (1.1.0). These rules were also violated when the Claimant failed to report the wide gauge defect.

The Claimant acknowledged the training as described above as well as training on the proper way to detect both narrow and wide gauge track deviations. The

Claimant also testified that he did not leave his hi-rail truck, nor did he use all available tools, to inspect the track.

The Carrier argues the claim should be denied because (1) the Claimant was afforded a fair and impartial investigation and (2) the Carrier met its burden of producing substantial evidence of the Claimant's guilt. The Carrier asserts the Claimant knew that the track in question was susceptible to wide gauge defects and that his failure to properly inspect the track amounts to negligence which could have led to a derailment of passenger/freight train in an urban environment. Additionally, the Claimant had a discipline record prior to this incident including a signed waiver for a thirty (30) day suspension placing him at the final step in the discipline process. Dismissal was assessed consistent with the Carrier's discipline policy.

The Organization contends the claim should be sustained because (1) the Claimant was not afforded a fair and impartial hearing in accordance with Rule 18 of the Agreement, (2) the discipline assessed was arbitrary and unwarranted, and (3) that the Claimant, a thirty-five-year employee inspected the track as required and did not find any defects and that the TEC discovered the defects using more sophisticated technology than is available to the Claimant. The Organization also argues that this section of the track is in a high-volume area. The Organization asserts it is possible between the Claimant's inspection on July 31 and when the TEC came through on August 2, the defects materialized

The Board has reviewed the evidence and testimony and concludes a fair and impartial hearing was conducted. Both parties had an opportunity to present and examine relevant witnesses. There is substantial evidence on the record before us that the Claimant violated the GCOR 1.1.3, Engineering Safety Rules Rights and Responsibilities and Red Book of Track Requirements 1.1.0. The Claimant admitted he failed to exit the hi-rail truck to inspect the track more closely. As the Carrier points out this is an egregious act of negligence that could result in a derailment in a populated area. The Board is not convinced that the defects detected by the TEC came about in the intervening three (3) days. The Claimant has worked for the carrier for 35 years and has an extensive discipline record that includes a waiver of a 30-day suspension less than one-year prior to this incident. Dismissal is the appropriate next step in the Carrier's discipline policy.

**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 28th day of November 2017.