

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43363
Docket No. MW-44316
19-3-NRAB-00003-170409**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(Dakota, Minnesota & Eastern Railroad Corporation

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [five (5) working day suspension and a two (2) year probationary period] imposed on Mr. J. Tady by letter dated November 10, 2015 for alleged violation of various rules in connection with his alleged ‘*** responsibility for work performed on August 26th , 2015 that contributed to a 2 car derailment on August 30th , 2015.’ was without just cause, excessive, on the basis of unproven charges and in violation of the Agreement (System File J-1534D-404/8-100 DME).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Tady’s record shall be cleared of the charges leveled against him and he shall ‘*** be reimbursed for the five days he was suspended and any overtime he may have been deprived of working during that time.’ ”**

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.

The Claimant was disciplined for failed to properly make repairs to the Trail Track at West Davenport on August 26, 2015 that led to a 2-car derailment four days later on August 30, 2015.

Our review of the evidence finds that the Carrier has failed to satisfy its burden of proof to establish a proper basis for the discipline imposed on the Claimant. No Carrier witness had first-hand knowledge of the condition of the track in question prior to the derailment. According to the record, the Claimant provided uncontradicted testimony that he performed the gauging of the track near the derailment site as he was directed to do. The thrust of the testimony of a track inspector was that the derailment was caused by the design of the reverse curving track and the use of a 6-axle locomotive to move through the curves. The locomotive would have imposed forces on the rails that exceeded the forces allowed by the Code of Federal Regulations. In addition, the design of the track combined with the use of 6-axle locomotives on it would have caused the condition of the track to deteriorate quickly after any repairs.

The Claimant was a 34-year of service employee at the time of the incident. The record also fails to establish a proper basis for the Carrier to impose another probationary period on an employee beyond the new hire period.

Given the state of the evidentiary record, we must sustain the claim in its entirety.

AWARD

Claim sustained.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 14th day of December 2018.