

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43658
Docket No. MW-44341
19-3-NRAB-00003-170417**

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: (
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [ten (10) day actual suspension and one (1) year disqualification as a track inspector] imposed upon Track Inspector G. Church, III by letter dated June 14, 2016 for alleged violation of CSX Transportation Operating Rule 100.1 and 104.1 in connection with his alleged failure to locate broken rail on April 9, 2016 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File D70704416/2016-207980 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall remove the charge letter and all matters relative thereto from Claimant G. Church, III’s personnel file, he shall be returned to his former position and he shall be made whole for all losses 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.

The Claimant was charged with violating two Carrier rules that require safe and efficient performance of his work duties as a Track Inspector.

According to the record, the Claimant was called out because a section of track was giving the dispatcher a “track light” in the early morning hours of April 9, 2016. Something was interrupting the electrical signal current of the signal system on a stretch of approximately 4 ½ miles of track. A broken rail was suspected but the light could have been caused by several other types of defective conditions.

The method of broken rail detection available to the Claimant in the dark hours of the morning was to hi-rail the track in an attempt to either visually detect a break or feel the “hit” as the vehicle crossed over the break. The section of track was supported on concrete ties which make it virtually impossible to feel the hit as the Claimant hi-railed over the break. It was also not visually detectable in the dark from his viewpoint in the cab of his truck. He had limited track occupation authority because of the Carrier’s need to pass two trains over the section. When he could not find the break initially, he got off the track to allow the trains to pass. He then requested additional time to inspect again with a signal maintainer. As the two employees hi-railed the section, they crossed the break but both could neither feel or see it despite crossing over it twice. It was finally located by the maintainer who used an electrical meter to measure signal system current to narrow down the location of the break. By walking the track every 1,000 feet or so with the meter, they found the break. According to the maintainer’s testimony, “... the meter puts you pretty much right on it and then you can see it.” The gap in the rail was less than ¼-inch, and that was after two trains ran over it at restricted speed.

The record fails to prove that the Claimant could have detected the break the

first time hi-railing by himself given the methods that were available to him in the limited track time he had. Moreover, although part of the Claimant's discipline was a 1-year disqualification as a track inspector, when asked by the hearing officer if the Claimant was qualified to track inspect, the Carrier's charging official replied, "Yes sir, he is."

Given the state of the record in this case, we must find that the Carrier's discipline is not supported by substantial evidence in the record. The claim, therefore, must be sustained.

AWARD

Claim sustained.

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 17th day of May 2019.