

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43944
Docket No. MW-44689
20-3-NRAB-00003-180176**

The Third Division consisted of the regular members and in addition Referee Meeta A. Bass 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 Carrier’s decision to disqualify Mr. C. Green as a track inspector for six (6) months beginning on March 18, 2016 was arbitrary and unwarranted (System File D21003316/2016-204547 CSX)**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Green shall be reinstated to his previous position and he shall be compensated for loss of work opportunity and benefits resulting from the Carrier’s action including all straight time and overtime losses and reductions in compensation incurred.”**

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 Carrier issued a Notice of Disqualification by letter dated February 17, 2016, which gave notice of an investigation in to the following incident:

“This will confirm your disqualification as a track inspector, effective February 11, 2016, due to your failure to demonstrate the minion standards of a track inspector when you failed to identify out of service gage (sic) in a track.”

The disqualification hearing was held on March 1, 2016. Following the hearing and by letter dated March 18, 2016, the Carrier found substantial evidence establishing that the Claimant did meet the qualifications of track inspector, and upheld the disqualification of him as a track inspector beginning March 18, 2016, for six months. By letter dated April 14, 2016, the Organization filed a claim asserting that the record failed to support the Carrier’s decision to disqualify the Claimant without justification. The Organization explained that the Claimant was scheduled to perform his monthly inspection of the track on February 11, 2016, but the Roadmaster did her inspection before the Claimant, and denied him the opportunity to complete his inspection to find and property report the same. The Organization also opined that over a month had passed since the last compliant inspection, and other factors caused the track becoming out of compliance since its last inspection. The Carrier denied the Organization’s claim on May 12, 2016, and opined that its decision was no arbitrary based on the evidence established in the transcript. A formal conference was held on December 21, 2016. The parties were unable to resolve the dispute and the claim is before this Board for a final resolution of the claim.

The Organization contends that the decision of the Carrier to disqualify the Claimant from his track inspector position was arbitrary, capricious and based on the speculation of the Roadmaster. The record contains no probative evidence which would serve to justify the Carrier’s decision to disqualify the Claimant from his position as a track inspector. The evidence established that the January 8, 2016 inspection complied with proper track standards, the Claimant was scheduled to perform his monthly routine track inspection on the same date that the Roadmaster inspected the track but was not allowed to conduct his inspection, other factors contributed to gauge opening, i.e., weather conditions, train movement, track tonnage, deteriorated cross ties, and that

an interim track inspection was performed by Management on January 13, 2016. The Organization asserts that the defect occurred after the inspection of January 8, 2016. The discipline imposed was arbitrary, unwarranted, excessive and without just cause, and request that the Claim be sustained.

The Carrier contends that this claim is not properly before the board and, in addition, is procedurally defective. The Carrier argues that the Organization failed to cite to any applicable rule in the on-property handling and the Organization's Statement of Claim before the Board. Under the Railway Labor Action, the Board's jurisdiction is limited to disputes arising from rules and agreements between the parties, and likewise, the Organization failed to clearly state the question before the Board as required by NRAB Rules of Procedure. The Carrier afforded a fair hearing and opportunity to present evidence in his defense. The Carrier asserts that disqualification is not discipline, and the rules do not provide for a twenty-day time limit. The Carrier contends that the evidence establishes that prior to the disqualification, the Roadmaster found multiple issues with inspections, such as improper gauge readings, gaps in switch points and other factors that caused concern about his performance of his job duties. On January 28, 2016, the Roadmaster that she walked track inspected by the Claimant on January 8, 2016, and found additional defects. The Roadmaster testified that the January 8, 2016 inspection report completed by the Claimant could not be correct. She stated that the 58 and 1/8 gauge found in a track would have been there as of January 8, 2016 and it is unlikely rails could move from 57 and 1/16 inches to 58 and 1/8 inches in a month. The Roadmaster offered the Claimant the opportunity to receive additional training and mentoring from a more seasoned track inspector but the Claimant declined. The Carrier contends that the Organization failed to meet its burden of proof. The Carrier maintains the disqualification was not arbitrary, capricious, excessive, and not in violation of the Agreement.

The Board has reviewed the record developed by the parties during their handling of the claim on the property, and considered evidence related to whether the disqualifications was arbitrary, capricious, discriminatory or unreasonably harsh as applied to the facts and circumstances giving rise to this claim. The Board, therefore, finds the Claimant received a full and fair investigation with due notice of the issue, opportunity to defend and representation.

Based upon the testimony of the Roadmaster, the Board finds that the Roadmaster expressed her concerns about the Claimant's performance following a

personal walkthrough of the Claimant's inspection work; however, the Roadmaster chose not to disqualify the Claimant based on her findings at that time. Instead, the Roadmaster allowed the Claimant to continue with his duties with an expectation that he would do better. Subsequently, on February 11, 2016, the Roadmaster and the Federal Railroad Administration inspector inspected the track in question and found the 58 and 1/8 gage in the track in question. It is not disputed that the Roadmaster contacted the Claimant to apprise him of the situation, told him that he would be receiving an assessment, and she almost cited with a Code-1 violation. It is also not disputed that the track in question was listed for the Claimant's inspection that day. It is speculation to presume that the Claimant would not have detected the gage himself and request or take remedial action. It is also speculation that the Claimant's January 8, 2016 report was inaccurate. The evidence does not establish that the Claimant failed to detect the gage on January 8, 2016, and other variables may have attributed to the widening of the gage on a Class I track. This Board is not inclined to disqualify the Claimant when the impetus for the disqualification is not proven.

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 5th day of March 2020.