

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44060
Docket No. MW-45212
20-3-NRAB-00003-180742**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens 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) days actual suspension and one (1) year disqualification] imposed upon Mr. J. Acker, by letter dated September 19, 2017, for alleged violation of CSX Transportation Operating Rules 100.1 and 105.1 (2) was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (Carrier’s File 2017-227120 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Acker shall be fully compensated (straight time, overtime, double time and otherwise) and given all benefits and credits in compliance with Rule 25.”**

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.

At the time of his discipline, the Claimant held the position of Track Inspector and had been in the Carrier's service since July 7, 1978. On April 4, 2017, the Claimant was given notice of an investigation in connection with the following charge:

"The purpose of this formal investigation is to determine the facts and place your responsibility, if any, in connection with an incident that occurred at approximately 1300 hours, on March 24, 2017, in the vicinity of East Syracuse, New York, when you failed to properly protect CP 286 #7 cross over and all circumstances related thereto."

After a formal investigation on August 30, 2017, the Claimant was found in violation of CSX Transportation Operating Rules 1001.1 and 105.1(2) and was assessed a 10-day actual suspension and 1-year disqualification as a Track Inspector.

The Organization filed a claim on September 28, 2017, which was declined by the Carrier on November 21, 2017. The matter was progressed on-property, but the parties were unable to resolve the claim. It is now properly before this Board for final adjudication.

During the investigation, Roadmaster Trampas Bourgeois testified that on March 24, 2017, a geometry car was tested at the Syracuse Terminal for track conditions and found several defects, including one where there was 3.55 inches of warp. According to the Roadmaster, such defects are classified Priority One and are of such serious nature, the track was taken out of service as the warp limit for a Class 3 Track is 2 inches. There is no dispute that on March 15, 2017, the Claimant inspected the track on that territory but did not record any defects. The Claimant testified that on March 15, he was hi-railing and he had last walked the track in January. He said that he noted in his report that the track was snow-covered and that there were "white out" conditions on the day of the inspection. The Claimant testified that he couldn't see the rail he was traversing on due to the snow.

CSX Operating Rule 100.1 provides, in part:

“Employees must know and comply with rules, instructions, and procedures that govern their duties. They must also comply with the instructions of supervisors.

When there is uncertainty, employees must:

- 1. Take the safe course, and**
- 2. Contact a supervisor for clarification”**

Operating Rule 105.1 states, in relevant part:

“Protect trains and on-track equipment against any known condition that may interfere with safe operations. Immediately report the following conditions to the proper authority:

(2) Defects in track, bridge, signal, or highway-rail crossing warning devices;”

The Carrier contends it has established by substantial evidence that the Claimant violated its Rules. The Carrier contends that the record shows that the track condition warranted removal from service because the track was significantly warped. The Carrier contends that the Claimant admitted that he did not notice the defect when he inspected it. The Carrier contends that it has shown that the Claimant failed to protect the track, and the assessment of discipline was justified. The Carrier contends that the Claimant was granted a fair and impartial hearing.

The Organization contends that the Carrier failed to comply with the procedural protections of Rule 25, as the Claimant was not provided the specific charges that he was facing.

The Organization contends that the Carrier failed to establish that the Claimant failed to contact a supervisor for clarification as required by Rule 100.1. The Organization further contends that the Carrier failed to offer any evidence that the Claimant failed to report a defect as required by Rule 105.1. The Organization concedes that a defect was present but contends that there is nothing that establishes that the Claimant observed such and failed to report it.

There is no dispute that track that the Claimant was assigned to inspect contained a significant defect and was removed from service. the Claimant admits that he had inspected that section of track, but he was hampered in his inspection by snow covering

the track. The Claimant does not deny that he inspected this track and failed to see a significant, Priority One, defect.

Where there is an admission of guilt, there is no need for further proof. This Board finds that sufficient evidence exists to support the findings against the Claimant. The penalty, which was in accordance with the Track Inspector's Agreement, was not excessive. This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit.

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 18th day of June 2020.