

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44629
Docket No. MW-46252
22-3-NRAB-00003-200965**

The Third Division consisted of the regular members and in addition Referee Paul S. Betts when award was rendered.

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

PARTIES TO DISPUTE: (
(Connex Railroad, LLC

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Mr. L. Motsinger, by letter dated August 16, 2019, in connection with his alleged failure to properly inspect tracks and record inspection reports during the month of June 2019 was arbitrary, excessive and in violation of the Agreement (System File N7010159/190604 CNX).**
- (2) As a consequence of the violation referred to in Part (1) above, we request that Claimant L. Motsinger be exonerated, the dismissal letter and all matters relative thereto be removed from Claimant’s personnel file and that Claimant be made whole for all losses suffered including vacation and retirement as a result of the Carrier’s actions.”**

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 incident, the Claimant was working as a track inspector. The Claimant had nineteen years of combined service in the industry, with the first fifteen years at CSX and the most recent four years at Connex.

On June 27, 2019, an FRA inspection was conducted on tracks the Grievant was responsible for. The FRA inspection found that the line was not in compliance with FRA safety standards. The Carrier reviewed the Claimant's inspection reports and did not find any corresponding defects reported on that segment of line. Based upon this discrepancy, the Carrier also reviewed Claimant's reports for June 2019, and compared the reports to the GPS data on the Carrier-owned vehicle used by the Claimant. Based upon the comparison of the reports to the GPS data, the Carrier alleged that it would have been impossible for the Claimant to perform the inspections as reported.

As a result, an investigation was conducted on August 6, 2019, alleging violations of the following rules:

- Rule 1.4 – Carrying Out Rules and Reporting Violations
- Rule 1.6 – Conduct, Dishonest
- 49 CFR Part 213.241 – Responsibility for Compliance

Following the investigation and by letter dated August 16, 2019, the Claimant was dismissed. In relevant part, the August 16, 2019, notice states the following:

“...This letter is in reference to the disciplinary hearing that was held on August 6, 2019, in connection with the charge that as a qualified Track Inspector you failed to properly inspect the tracks and record inspection reports for the tracks you were assigned.

Specifically, the Federal Railroad Administration ("FRA") inspector conducted an inspection on June 27, 2019. Their inspection included the tracks under your responsibility and a review of the inspection reports you electronically recorded in the regulatory compliant system utilized by the company. During the investigation documentation was presented that the track you were responsible for was reported as having "no defects" when,

in fact, the FRA's inspection uncovered multiple defects including record keeping errors.

Also, your supervisor conducted a spot check of your inspection reports completed during the month June. For several inspection reports you state you completed and recorded, the GPS records for the vehicle assigned to you show you were never at that location, such as "Plantation" and the "MIC". Additionally, for several inspection reports you completed that require a walking inspection, the GPS records for the vehicle assigned to indicates you drove through that inspection area and did not stop.

A thorough and final review of the transcript and exhibits demonstrates that during the hearing you and your representative were allowed to cross examine the Company witnesses and present any witness, documents or testimony on your behalf, in accordance with your contractual due process rights.

Substantial evidence was provided and proven during the investigation; therefore, the discipline assessed is termination of your employment effective today, August 16, 2019..."

The Organization filed a claim on behalf of the Claimant dated September 15, 2019. Thereafter, the claim was handled in the usual manner, up to and including claims conference, which was held on January 7, 2020. The parties were unable to resolve the matter and the dispute now comes before this Board for final adjudication.

In summary, the Carrier argues a) the decision to dismiss the Claimant was not made arbitrarily, as the Claimant received a fair and impartial hearing, b) the Claimant's dismissal was not excessive, and c) the Carrier did not violate the Agreement by dismissing the Claimant.

In summary, the Organization argues a) the Claimant was denied his contractual right to a fair and impartial hearing when the Carrier leveled charges against him that were vague and non-specific, b) the Carrier failed to timely charge the Claimant in accordance with Rule 19 of the Agreement, and c) the Carrier failed to fulfill its burden of proof, and d) the discipline imposed upon the Claimant is unwarranted and excessive.

The Board has reviewed the procedural arguments raised by the Organization and find them lacking. Here, the charge letter detailed the specific rules allegedly violated by the Claimant (Rule 1.4 – Carrying Out Rules and Reporting Violations; Rule 1.6 – Conduct, Dishonest; and 49 CFR Part 213.241 – Responsibility for Compliance) and also specified in detail the matter under investigation as follows:

“... During a June 27, 2019 inspection by a representative of the Federal Railroad Administration ("FRA") including an inspection of track under your responsibility as well as data entered by you as federal record, it was determined that track in your charge was reported as having "no defects" when, in fact, the FRA's inspection uncovered multiple defects including record keeping errors.

Furthermore, when your supervisor conducted a spot check of your inspection reports completed during the month June, it was found that:

- For several inspection reports you completed the GPS records for the vehicle assigned to you show you were never at that location, such as "Plantation" and the "MIC".
- For several inspection reports you completed that required a walking inspection, the GPS records for the vehicle assigned to indicates you drove through that inspection area...”

The Board also finds the Organization’s claim that the Carrier failed to timely charge the Claimant under Rule 19 to be lacking. General Manager Reardon could not have had any knowledge of the alleged violations until sometime after the June 27, 2019, FRA inspection. Here, the Claimant was charged on July 12, 2019, well within the 30-day limit specified in Rule 19.

As to the merits, the Board finds the Carrier provided substantial evidence to support the charges against the Claimant. The Claimant testified that the discrepancies on his reports were because he had problems with RailDocs and may have performed the inspections on different dates than what was indicated on the reports. The Board found the Claimant’s testimony on this matter to be unreliable. The Claimant was aware of the requirement that he input his inspections on the day of the actual inspection and failed to specify the actual dates on which he claimed to have performed the inspections. Furthermore, even if, arguendo, the Claimant was allowed to inspect and then report those inspections on different dates (which violates 49 CFR Part 213.241), it

does little, if anything, to explain the fact that the defects were not found, documented, or reported.

Furthermore, the Board cannot find the Carrier acted in an unreasonable, arbitrary, or capricious manner. It should be noted that the Claimant had signed a Waiver for a similar infraction on October 24, 2018, which placed the Claimant on a one-year probationary period. The one-year probationary period under the Waiver was still active at the time of the incident here.

Based upon the totality of the record, the claim must be denied.

Although the Board may not have repeated every item of documentary evidence or testimony nor all of the arguments presented, we have considered all of the relevant evidence, testimony, and arguments presented in rendering this Award and Order.

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 15th day of December 2021.