

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44759
Docket No. MW-46426
22-3-NRAB-00003-210240**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

PARTIES TO DISPUTE: (

(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1) The discipline (dismissal) imposed upon Mr. B. Puckett, by letter dated February 14, 2020, for alleged violation of GCOR 1.1.3 Accidents, Injuries and Defects and Track Safety Standards Part 213-213.53 Gage in connection with allegations that at the Round House on 08/26/19, 09/23/19, 10/23/19, 11/21/19 and 12/18/19, Claimant did not make note of any defect(s) or take any remedial action on the segment of track that did not meet Class 1 minimum track safety standards on Track 1 in the Round House in Hammond, Indiana on January 12, 2020 was arbitrary, excessive and in violation of the Agreement (System File BMW 20-006 IHB).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant B. Puckett shall now be made whole ‘... compensating him for all lost time and wages restoring all rights and benefits and expunge his personnel record removing assessed discipline and any and all reference of this issue from Appellants (sic) discipline record and otherwise make him whole.’”**

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.

After investigation held January 24, 2020 and by letter dated February 14, 2020, the Claimant – an employee in the Carrier’s service for over 16 years – was dismissed for failing to properly perform track inspection duties in that he failed to properly identify wide gauge track.

Working as a track inspector, the Claimant inspected the Carrier’s Track 1 in the Hammond Round House five periodic times in 2019, the last being on December 18, 2019.

On January 12, 2020, an engine derailed on Track 1. Inspection by the Carrier determined that the cause of the derailment was a wide gauge in the track with measurements showing as wide as 59 1/4 inches at the point of the derailment. The standards for track gauges (Class dependent) allow between 56 and 58 inches. Employees performing track inspection work are trained to note on their inspection reports gauges that are at 57 1/2 inches. The Claimant’s reports do not show such notations for the track at or near the point of the derailment.

Substantial evidence therefore shows that the Claimant did not perform his track inspection duties.

The Organization argues that the Carrier’s determination that the Claimant did not perform his track inspection duties was based upon speculation. However, the record sufficiently shows that widening of track gauges is a very slow process and prior inspections by the Claimant should have caught the widening gauge where the derailment occurred.

The Claimant’s prior record shows this incident was the Claimant’s third serious rule violation within six months for similar misconduct. The Claimant’s record shows a serious offense from July 2019 for a wide gauge violation (which also resulted in a derailment) for which he received a training day and another serious offense from deficient inspections again missing wide gauges in November and

December 2019 (again resulting in derailment) for which the Claimant received a 10-day suspension. The Claimant's prior disciplinary record also shows lengthy suspensions including a dismissal (with the Carrier agreeing to reinstatement). See Carrier Exhibit E.

"... [T]he purpose of discipline is to correct employee misconduct and not punish and to do so by sending a corrective message to employees that they must comply with the Carrier's Rules" First Division Award 30396. Given the Claimant's prior record and the misconduct demonstrated in this case, we find that the Claimant is not getting the message that he must carefully perform his inspection duties and comply with other Carrier rules. Dismissal was therefore not arbitrary.

This Board is faced with procedural arguments which we do not find change the result. However, we do need to comment on one aspect of the development of the record in this case.

At times, the hearing record developed on the property showed a contentious proceeding which makes it all the more difficult for this Board to parse through the record to determine the relevant facts for making a decision. These hearings on the property must be conducted in a professional and respectful manner by both sides and, most important, the employees must be allowed to have a forum and a process that is fair to allow for an end result that yields the presentation of all relevant facts. That process must be followed. We were able to accomplish that end result in this case. However, at times contentious level of the proceedings on the property did not make that job easy.

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 29th day of July 2022.