

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44849  
Docket No. MW-46626  
23-3-NRAB-00003-210581**

**The Third Division consisted of the regular members and in addition Referee Melinda Gordon when award was rendered.**

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

**PARTIES TO DISPUTE: (**  
**(National Railroad Passenger Corporation (Amtrak)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The discipline (dismissal) imposed upon Mr. S. Johnson, by letter dated September 28, 2020, for allegedly falsifying a track inspection report was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (Carrier’s File BMW-158902-D NRP).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant S. Johnson’s personal record shall be cleared of the charge leveled against him and he shall be compensated for all lost wages and benefits.”**

**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 charged Claimant Track Foreman Shafer Johnson (“Claimant”) with falsifying a Federal Railroad Administration (“FRA”) track inspection report as a**

result of failing to perform his assigned duties. Prior to his dismissal, Claimant had approximately nine years of service with the Carrier.

On September 25, 2020, Claimant attended a remote formal investigation (“hearing”) regarding the Carrier’s allegations. According to the record, on September 14, 2020, Claimant was assigned to inspect a section of track on the Michigan Line between milepost (“MP”) MP 109.4 and MP 75. The Claimant electronically signed off on an FRA form stating that he had inspected the entire track length assigned to him.

During the formal investigation, Claimant conceded he failed to inspect the track between MP 109.4 and MP 104. Claimant also asserted that he had mistakenly signed off on the FRA form confirming his inspection. Claimant’s actions violated his obligation as an employee, to be honest and forthright in providing information to his employer and by extension, to the FRA. Claimant’s actions are especially troubling considering the implications for public safety and the Carrier’s FRA reporting obligations.

The Organization raises various procedural arguments alleging that the Carrier violated Claimant’s due process rights. The Organization asserts that the Carrier violated Claimant’s rights by holding a virtual hearing. During the COVID-19 pandemic, federal and state courts and other quasi-judicial forums widely adopted virtual hearings. The Carrier provided Claimant with a hearing which included audio and video capability. Although some transcript testimony was labeled “inaudible,” such a result is not uncommon even during in-person hearings. Notwithstanding the Organization’s procedural arguments, there was no proof that the hearing officer misinterpreted the evidence or that the Carrier’s use of a virtual hearing resulted in any prejudice to the Claimant.

### **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 10<sup>th</sup> day of March 2023.