

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45021
Docket No. MW-47052
23-3-NRAB-00003-220137**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

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

PARTIES TO DISPUTE: (

(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Mr. J. Hammond, by letter dated March 5, 2021, for alleged violation of Safety Rules PGR-C and PGR-L, as well as Track Safety Standards §213.233 and §213.241, in connection with his alleged falsifying of I&R reports on November 5, 10, 12, 13, 16,18, 20, 23, and 25, 2020 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement.**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Hammond shall now ‘*** be reinstated back to service effective immediately with all straights time, overtime and double time wages worked by his position, as well as all credits for vacation and any other benefits under our Collective Bargaining Agreement with all charges filed against him withdrawn ***.’”**

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 the events leading to this claim arose, Claimant J. Hammond was assigned as an I&R Foreman. In a letter dated January 26, 2021, the Carrier notified the Claimant to appear for a formal investigation into the following charges:

On Friday, January 22, 2021, the FRA brought some concerns to the Carrier's attention after a record review. On January 26, 2021, while matching up Form D's to your inspection reports, it was discovered that on 11/5/20, 11/10/20, 11/12/20, 11/13/20, 11/16/20, 11/18/20, 11/20/20, 11/23/20, 11/25/20, while working as I&R Foreman in North Adams you allegedly falsified I&R reports.

After two postponements, the investigation was held on February 23, 2021. Subsequent to that hearing, on March 5, 2021, the Carrier notified the Claimant that he had been found guilty of the charges against him and was dismissed from Carrier's service as of that date.

The Organization filed a claim on Mr. Hammond's behalf on April 1, 2021. The claim was denied, and the matter progressed in accordance with the Parties Agreement, after which it remained unresolved. It is properly before the Board for adjudication.

The Carrier maintains that the discipline assessed was proper under the circumstances. It points out that as shown by the reports submitted by the Claimant himself (Carrier Ex. F in the transcript), the Claimant reported making track inspections on trackage for which there was no corresponding Form D documentation and not making inspections on trackage for which he had Form D documentation. Since the infractions occurred on nine different dates, the Carrier contends that it was not simply a temporary oversight on the Claimant's part. The Carrier also disputes the Claimant's allegations that he was pressured by management to fill out his inspection forms notwithstanding any inaccuracies that might result. In summary, the Carrier proposes that the instant claim should be denied in its entirety.

For its part, the Organization maintains that the Carrier has not met its burden of persuasion in this case. Initially, the Organization contends that the Carrier did not conduct a fair and impartial hearing, because a key (and potentially exculpatory)

witness listed as attending was, in fact, not present at the hearing. With respect to the merits, it notes that the Claimant testified without contradiction that he was overburdened by the absence of another employee and was unable to keep up with both the track inspections and the paperwork associated with them. At no point did the Claimant neglect to perform the inspections and no flaws were later found in the tracks he was tasked with inspecting during each of the dates at issue. Accordingly, the Organization insists that the instant claim should be sustained in full.

The Board has reviewed both the documentary and the testimonial evidence in this case with care. With regard to the Organization's contention that the absence of the Claimant's immediate supervisor constituted a fatal procedural flaw in the Claimant's investigation, we do not find in the particular circumstances of this case that the immediate supervisor's absence (apparently due to his illness) was sufficiently problematic to compromise the Claimant's right to a fair investigation.

With respect to the merits of this case, however, we do not find that the Claimant was entirely at fault with respect to the inconsistencies in his Form D inspection reports. It is uncontested on this record that the Claimant's workload, insofar as physical inspection of tracks, had been considerably increased due to the absence of another track inspector during the dates at issue. (Tr. pp. 22-23) Furthermore, the Claimant testified without contradiction that he was faced with having to fill in the Form D reports several days after the inspections were made. Thus, he contended, it was likely that he confused applicable dates when he later filled out the Form D's at the direction of his immediate supervisor. (Tr. p. 43) Moreover, uncontroverted evidence on the record indicates that the Claimant repeatedly requested help from his immediate supervisor but was not afforded the assistance necessary to fulfill both his inspection responsibilities and completing his paperwork in a timely fashion.

There is no evidence on this record to suggest that any of the Claimant's actual track inspection duties were not completed. Thus, there is no evidence on this record to indicate that the Carrier found any flaws in the trackage assigned to the Claimant on the dates listed in the charge. However, the Claimant's own testimony on this record indicates that while the Claimant's immediate supervisor shares some responsibility for the inaccuracies in the Claimant's retrospectively completed Form D's, the Claimant did not raise the issue of his "overburdened" workload in either a timely fashion or with the proper Carrier supervisors who might well have been able to take measures to mitigate his workload, and thus enable him to fulfill both his track inspection and his essential reporting responsibilities. (Tr. p. 24)

Finally, we note that it was not unreasonable for the Carrier to remove the Claimant from service pending the investigation on the premise that if it were found that the Claimant had not performed the inspections he was supposed to or had not assured that the tracks he was inspecting would be devoid of train traffic, that fact would reasonable constitute a safety threat to himself and his fellow employees.

In light of the foregoing, and in the unique circumstances in this case, the Board finds that the ultimate penalty of dismissal from service is excessive. Accordingly, the Claimant's discipline shall be reduced to an actual two-month suspension, and he shall be returned to work, with back pay and all seniority rights and benefits intact, less the two-month actual suspension.

AWARD

Claim sustained in accordance with the Findings.

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 3rd day of August 2023.