

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45486  
Docket No. 47694  
25-3-NRAB-00003-220945**

**The Third Division consisted of the regular members and in addition Referee Michael G. Whelan when award was rendered.**

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

**PARTIES TO DISPUTE: (**  
**(New England Central Railroad, Inc.**

**STATEMENT OF CLAIM:**

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

**(1) The discipline [eight (8) day suspension] imposed upon Mr. J. Cameron, by letter dated September 14, 2021, for his alleged violation of FRA 213 and General Code of Operating Rules, Eighth Edition, effective April 1, 2020, Rule 1.6 (Conduct-Negligence), in connection with his failure to properly perform his duties as a track inspector resulting in a July 8, 2021 derailment of the NECR 502 Train on the Poulin Grain track in Swanton was not on the basis of a fair and impartial hearing and/or the Carrier’s meeting its required burden of proof (NCR).**

**(2) As a consequence of the violation referred to in Part (1) above, Claimant J. Cameron’s eight (8) day suspension cannot stand and the Carrier shall now “\*\*\* compensate the Claimant for all losses in wages in straight time as well as any overtime wages for all work he lost during his improper suspension and overtime opportunities he would otherwise have qualified for if not improperly suspended. Further, the Organization seeks that this disciplinary action against the Claimant also be completely removed and expunged from his record.”**

**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.

Claimant J. Cameron entered the service of the Carrier on December 18, 2006, and he has established and holds seniority within the Carrier's Maintenance of Way Department. At all relevant times, the Claimant was assigned as a Track Inspector for New England Central on the Swanton Subdivision.

On July 8, 2021, the NECR 502 train derailed. NECR Roadmaster Brandon Davis, Claimant's supervisor, responded to the emergency and noticed that the derailed cars had fallen into the track. Upon further investigation, Mr. Davis determined that the cause of the derailment was defective ties. The Claimant was allegedly the last track inspector to inspect the track where the derailment occurred.

On July 21, 2021, Claimant was served with a notice of formal investigation "to ascertain the facts and determine your responsibility, if any, regarding the report received that on Thursday, July 8, 2021, at approximately 21:20 hours, the NECR 502 train derailed on the Poulin Grain track in Swanton due to defective ties, and your failure to properly perform your duties as a Track Inspector for New England Central Railroad, Inc. directly resulted in this derailment, and all circumstances relating thereto."

The Carrier conducted a formal investigation on August 17, 2021. After the investigation, the Claimant was issued a notice of discipline on September 14, 2021, in which he was assessed an eight day suspension for a violation of FRA 213 and General Code of Operating Rule 1.6 (Conduct-Negligence). This case involves whether this eight day suspension imposed on the Claimant violated the parties' Agreement.

The Carrier claims that Claimant demonstrated negligent performance of his duties to ensure track was safe for passage by failing to identify and record the

seriously deteriorating condition of track ties during his inspection on June 8, 2021, which caused a derailment one month later, on July 8, 2021. In support of this claim, the Carrier alleges that the Claimant is qualified in performing track inspections and identifying defects. Further, the Carrier alleges that the Claimant acknowledged inspecting the track and ties which were central to the derailment on June 8, 2021, and, while doing so, he cited no defects and took no exception to the track. The Carrier also alleges that Roadmaster Davis confirmed that the Claimant performed the last inspection of the track involved in the derailment prior thereto; that the deteriorated ties were the cause of the derailment; and that their defective condition predated Claimant's inspection on June 8, 2021.

The Organization claims that a fair and unbiased review of the record will show that the Carrier failed to meet its required burden of proof to impose any discipline, and procedural flaws undermined the Claimant's right to a fair and impartial hearing. With regard to the Claimant's contractual right to a fair hearing, the Organization maintains that the investigation endured multiple due process violations. Specifically, the Organization contends that the Carrier failed to provide it with evidence prior to the investigation; the Carrier failed to properly charge the Claimant; and the Hearing Officer obstructed the Organization's representative. With regard to its allegation that the Carrier did not meet its burden of proof, the Organization alleges that the evidence provided by the Carrier's sole accuser—which is based on speculation by Mr. Davis about what was present on June 8, 2021, when the Claimant last inspected that location—is insufficient to support the allegation that the alleged defect led to the derailment on July 8, 2021. In addition, the Organization claims that the testimony of Mr. Davis—as the Claimant's sole accuser—cannot meet the burden of proof without corroboration.

In discipline cases, the Carrier has the burden to prove that there is substantial evidence that the Claimant engaged in the alleged misconduct. First Division Award 16785. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison v. NLRB*, 305 U.S. 197, 305 (1938).

Regarding whether the Carrier met its burden of proof, the evidence shows that the Claimant is qualified to perform track inspections and identify defects, and that he inspected the track in question on June 8, 2021, one month before the derailment, and, while doing so, he cited no defects and took no exception to the track.

The record also shows that the track ties were in a deteriorated condition on July 8, 2021. Carrier witness Mr. Davis testified that the ties were deteriorated at the time the Claimant inspected the track on June 8, 2021, and the cause of the derailment was wide gauge aided by ineffective ties. The Organization argues that Mr. Davis's testimony was based on speculation. Mr. Davis was not on the scene for the derailment and, therefore, did not witness the event, so the conclusions he reached during his investigation were necessarily based upon inference from the available evidence. Nevertheless, his conclusions carry significant weight because they were rationally based on his observations, experience and expertise, and they were corroborated by photographs of the scene. These photographs show that the ties at the site of the derailment shortly after it occurred were rotted and deteriorated and—even though the Claimant credibly testified that the derailment itself may have affected the condition of the ties—it is reasonable to conclude that the rotted condition of the ties existed 30 days before the derailment when they were last inspected by the Claimant. The corroborative photographic evidence also is a persuasive counterpoint to the Organization's argument that the Carrier decision to suspend the Claimant rested solely upon the testimony of one individual. Overall, this evidence was sufficient for the Carrier to meet its burden to provide substantial evidence of the Claimant's negligence.

The Organization raised three arguments in support of its contention that the Claimant did not receive his contractual right to a fair and impartial hearing. First, the Organization contends that the Carrier failed to provide it with evidence prior to the investigation. This argument is not persuasive because there is no contract language that requires the disclosure of documents in advance of the hearing; the Organization did not request evidence before the hearing; and the Hearing Officer offered to take a recess to allow the Organization an opportunity to review the documents and the Organization chose not to take that opportunity. Second, the Organization contends that the Carrier failed to properly charge the Claimant in a fashion that may have better apprised him of exactly what he was being charged with. The parties' agreement requires that employees facing possible discipline receive notice that contains "a clear and specific statement of the day, time, place, and nature of the occurrence/incident that is to be the subject of the hearing." The written notice provided to the Claimant fully complied with these contractual requirements. Finally, the Organization contends that the Hearing Officer obstructed its representative. A careful review of the record shows that the Organization's representative was provided with an adequate opportunity to object and examine witnesses, which he

used effectively. The Hearing Officer's interruptions appeared to be primarily for the purpose of developing his own understanding of the testimony, which is critical for performing his adjudicative role in the proceeding. In sum, the alleged procedural deficiencies in this matter do not rise to the level upon which it can be concluded that the Claimant did not receive his contractual right to a fair and impartial hearing.

**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 30<sup>th</sup> day of July 2025.