

**BEFORE PUBLIC LAW BOARD NO. 6239**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**and**

**CSX TRANSPORTATION**

**Case No. 32**

**STATEMENT OF CLAIM:**

Appeal of a twenty-day actual suspension issued to Claimant R. Y. Harbison as a result of investigation held on January 8, 2003, in regards to Claimant's alleged failure to perform his duties as a Track Inspector.

**FINDINGS:**

The Claimant was employed by the Carrier as a Track Inspector at the time of this claim.

In November 2002, the Carrier notified the Claimant to appear for a formal investigation to determine the facts in connection with the Claimant's failure to perform his duties as a Track Inspector on November 11, 2002. The Carrier alleged that the Claimant failed to detect a wide gage track defect on Track 1, MP 2.2, on the Chicago Line. The Carrier charged the Claimant with violations of NORAC Operating Rules, General Rule B, CSX Engineering Manual, Sub Parts 53 and 53.1, and Federal Railroad Administration Track Safety Standards, Part 213.53.

After postponement, the hearing took place on January 8, 2003. On January 28, 2003, the Carrier notified the Claimant that he had been found guilty of all charges and was being assessed discipline of a twenty-day actual suspension effective fifteen days from the Claimant's receipt of the Notice of Discipline.

The parties being unable to resolve their dispute, this matter comes before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that the Carrier has failed to meet its burden of proof that the Claimant failed to perform his

responsibilities as Track Inspector on November 11, 2002, when he failed to detect a wide gage track defect on Track 1, MP 2.2, on the Chicago Line. Although it is clear that on November 14, 2002, a defect was found by the track geometry car, there is simply insufficient evidence that that same defect was in existence and noticeable on November 11, 2002. The Claimant testified to the following:

The gage, the rails didn't indicate any marks of wide gage that I noticed.  
The tie condition is for that class of track and the area in question was sufficient.  
They didn't look like they were bad. They were not broken or split.  
They didn't indicate any failure that would have allowed the rail to move.

The Claimant later testified that he didn't notice any defects in the track at that location.

Moreover, the Claimant was traveling with another employee who filed a written statement for the record that said the following:

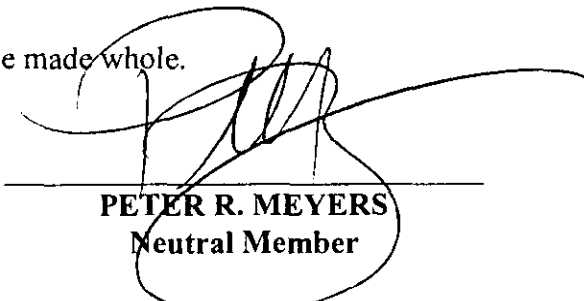
This letter is in reference to the inspection of track made on 11/11/02 of the Buffalo Terminal. Gage was found on Track 1 between CP Draw and CP 2 by the geometry car on 11/14/02. As in I&R Inspector with 29 ½ years of service riding with R. Y. Harbison on Track 2, I did not notice or take exception to any gage at that time as one of the three employees in the hyrail vehicle TC 5148. Sincerely, Robert Brice.

Mr. Brice states that he has been an I&R Inspector for twenty-nine and one-half years of service and the Claimant also has been employed by the Carrier for a long period of time. Since there is no other testimony as to the exact condition of the track on November 11, 2002, this Board cannot find that there was sufficient evidence in this record to prove that the Claimant failed to perform his responsibility on November 11, 2002. Therefore, the claim must be sustained.

**AWARD:**

The claim is sustained. The twenty-day suspension of the Claimant shall be removed

from his record and he shall be made whole.



**PETER R. MEYERS**  
Neutral Member

Dated: \_\_\_\_\_

4/23/03