

AWARD NO. 371  
Case No. 371

Organization File No. D91402018  
Carrier File No. 18-84662

**PUBLIC LAW BOARD NO. 7163**

PARTIES     ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,  
              ) INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
TO            )  
              )  
DISPUTE     ) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1.     The Carrier's disqualification of Mr. J. Miller, as a track inspector, by letter dated January 9, 2018, in connection with allegations that he failed to detect a three (3) inch profile on main track was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File D91402018/ 18-84662 CSX).
2.     As a consequence of the violation referred to in Part 1 above, Claimant J. Miller shall have the disqualification set aside and be made whole for all financial and benefit losses as a result of the disqualification."

**FINDINGS:**

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On November 22, 2017 Claimant was assigned as a Track Inspector on the Evansville Subdivision. On that date, Roadmaster Clayton Hodges received a call from the Help Desk advising him that there was rough track at MP 280.7. When he went to investigate, Hodges found a mud hole

with a three inch profile. This required the imposition of a ten mile per hour slow order. It was then learned that Claimant had found this mud hole during his inspection earlier that day, but failed to take any measurements. Consequently, no remedial action was taken until the area was inspected by the Roadmaster. Claimant's track inspection report shows no defects found.

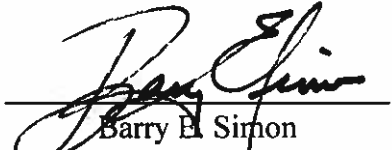
Because of this incident, Claimant was disqualified as a Track Inspector. The Organization then requested an unjust treatment hearing, which was conducted on December 20, 2017. By letter dated January 9, 2018, the Carrier confirmed Claimant's disqualification and restricted him from holding, displacing or bidding on all positions with similar skills or qualifications for a period of one year. That disqualification expired on January 9, 2019.

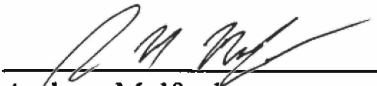
In consideration of an unjust treatment hearing for a disqualification, it is the Organization that bears the burden of proof. The Board has reviewed the record of the hearing and finds that the Organization has not met this burden. The evidence shows that Claimant observed this mud hole during his track inspection that day, but neither measured it nor reported it. His failure to take such action warranted his disqualification.

The Organization has objected to the fact that it did not receive a copy of the hearing transcript until three months after the hearing. It further states it never received the exhibits from the hearing. With respect to the latter, the Carrier asserts the exhibits were distributed at the hearing, and copies were given to the Organization at that time. As for the transcript, the Carrier states the Agreement prescribes a time limit for the issuance of a decision, but not for the delivery of the transcript. In the absence of a specific time limit for the transcript, we cannot find that the Agreement has been violated. For the Board to impose a time limit would effectively amend the parties'

Agreement, which is beyond our authority. Furthermore, the Organization has not shown that it was prejudiced by the length of time it took for it to receive the transcript. The Board cannot see how it impaired the Organization's right of appeal.

AWARD: Claim denied.

  
Barry E. Simon  
Chairman and Neutral Member

  
Andrew Mulford  
Employee Member

  
Katrina Donovan  
Carrier Member

Dated: 07/15/19  
Arlington Heights, Illinois