

**BEFORE PUBLIC LAW BOARD NO. 7386**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION  
IBT RAIL CONFERENCE  
and  
SOUTH KANSAS AND OKLAHOMA RAILROAD**

**Case No. 7**

**STATEMENT OF CLAIM:** “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s decision to assess a seven (7) day suspension, minimum one (1) year disqualification as a track inspector, two (2) year probationary period, as well as an additional thirty (30) day deferred suspension upon Claimant J. Pierce for alleged violation of FRA Rule 213.235 was entirely arbitrary, improper, and unwarranted (System File 220-13N1-121).
2. As a consequence of the Carrier’s violation referred to in Part 1 above, Claimant J. Pierce shall be afforded the full remedy prescribed in Rule 15D of the Agreement.”

**FINDINGS:**

By notice dated July 27, 2012, the Claimant was directed to attend a formal investigation on charges that from March 1 to June 30, 2012, the Claimant allegedly had failed to properly inspect track and/or submit proper documentation as required by the FRA. The investigation was conducted, after a postponement, on August 7, 2012. By letter dated August 17, 2012, the Claimant was informed that as a result of the investigation, he had been found guilty of violating FRA Track Safety Standards governing inspections, and that he was being assessed a seven-day suspension, a thirty-day deferred suspension, a one-year disqualification as a track inspector, and a two-year probationary period. The Organization subsequently filed a claim on the Claimant’s behalf, challenging the Carrier’s decision to discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because substantial evidence supports the finding that the Claimant is guilty of knowingly and willfully violating the FRA Track Safety Standards governing inspections, because the Claimant admitted that he was required by law to inspect the Port of Catoosa switches each month, because the Claimant admitted that his June 2012 inspection reports do not show that he inspected those switches, because the Carrier therefore reasonably concluded that the Claimant did not conduct these required inspections, because the Claimant was afforded all required elements of due process, and because the discipline imposed was appropriate. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to produce substantial evidence in support of its finding of guilt against the Claimant, and because the discipline imposed was clearly excessive.

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

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating 49 CFR Section 213.235 when he failed to inspect the switches that he was required to inspect on the dates in question. The Claimant did not have the written reports of those inspections, nor did he make those reports available to the Carrier. It is a requirement that after the switches be properly inspected that the Claimant submit proper documentation as required by the FRA.

Once this Board has determined that there is sufficient evidence in the record to



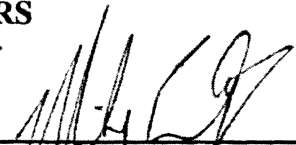
support the guilty finding, we next turn our attention to the type of discipline imposed.

This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case was issued a seven-day suspension for his rule violation. Since he previously had received a thirty-day deferred suspension, this suspension became a thirty-seven-day suspension. In addition, he was disqualified for one year. Given the seriousness of the Claimant's wrongdoing in this case, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued the discipline to the Claimant. Therefore, the claim must be denied.

**AWARD:**

The claim is denied.

  
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**PETER R. MEYERS**  
Neutral Member  
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**ORGANIZATION MEMBER**  
DATED: 11-4-14  
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**CARRIER MEMBER**  
DATED: 11-6-14