

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13498

Docket No. 13325

00-2-98-2-9

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

(Brotherhood Railway Carmen Division
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- (1) That the Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 13 when they arbitrarily assessed Carman Robert L. Bourgoin with a formal reprimand as a result of an investigation held on March 14, 1997.
- (2) That, accordingly, the Springfield Terminal Railway Company be ordered to remove the formal reprimand from the file and record of Carman Robert L. Bourgoin. Additionally, to compensate him for any lost time to attend such hearing.”

FINDINGS:

The Second 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.

By letter dated March 6, 1997, Claimant, a 27 years of service, was instructed to attend a hearing to determine his responsibility concerning his alleged improper performance of duties in Waterville, Maine on car LVRC 31410 on February 25, 1997 and on car MEC 20043 on February 26, 1997. These cars were found with defects in their brake shoes on March 6, 1997 causing unnecessary delay to Train POSD.

The transcript of the Investigation establishes that the Claimant and coworker D. McCaslin, also a long term Carman, were assigned to inspect and repair the noted cars without being told of any specific defects. The Claimant did not recall working on the specific cars, but indicated that he would work one side of the car while McCaslin worked the other, and McCaslin would fill in the bad order tags indicating the work performed by each. The Claimant would inform McCaslin what he did, and agreed that he trusted him implicitly to record the information and sign off for both of them on the ticket when the repairs were completed. The Claimant testified that both employees were equally responsible for the work on the car, but explained that he does not know what is happening on the other side of the car and neither employee inspects the other's work. The Claimant stated that he always inspects the brake shoes on each car, and had no explanation about why one car had a brake shoe missing and the other had a broken shoe. The Claimant understood what condemns a brake shoe, and had repaired and replaced them many times in the course of his duties.

The record also reflects that the defective shoe in issue had a crack in it, exposing dirt and dust indicating to a number of witnesses that it was not a new shoe. All Carrier witnesses questioned admitted that the existence of a crack in the shoe is not a condemnable defect, that a visual inspection will not reveal whether there is a piece of the shoe which is loose on the backing plate, and that with the icy and wet weather conditions existing at the time, it was possible that a loose piece could have been dislodged from the shoe upon being moved. No one testified that such occurrence was probable. The Carrier witnesses also recalled the practice of trainmen "borrowing" parts (such as knuckle pins) from cars standing in the yard for the purpose of making quick repairs without taking a car out of service, but there is no direct evidence of brake shoes having been taken in this fashion. The record reflects that the Claimant has had no problems with making repairs of this type or otherwise in the past.

The Carrier argues that there is substantial evidence in the record to support its determination to give the Claimant a formal letter of reprimand for improperly performing his duties on these two occasions by not replacing a missing and broken

brake shoe. It asserts that the Organization's attempts to raise possibilities as an explanation for the defective and missing brake shoes is reliance upon supposition rather than fact, and cannot defeat the evidence that the Claimant was responsible for the repairs which were found not to have been completed. The Carrier relies upon Second Division Awards 12144, 13198 and 13287 in arguing that the claim must be denied.

The Organization contends that the Carrier has failed to meet its burden of proving the Claimant's responsibility for the defective and missing brake shoes, especially in light of the 10 day time lapse between when the cars were signed off by the Claimant and his co-worker and found defective. The Organization argues that the broken shoe could have appeared visually fine, even with a crack, at the time of inspection, calling no need to probe further, and that the icy conditions could have caused the loose piece to dislodge when it was moved to the release track. It further alleges that the missing brake shoe could have been the result of a part robbery by another train in an effort to make a speedy repair, which is not an uncommon practice around the yard. The Organization asserts that the discipline must be removed from the Claimant's record as it was in a similar case on the property in Second Division Award 13397, and based upon the theory of proximate cause, citing Second Division Award 6356.

A careful review of the record reveals no dispute that the cars in question were repaired and released for service by the Claimant and McCaslin on February 24 and 25, 1997, they were moved to the PK and release track by trackmobile some time thereafter, and that they were later repaired by another Carman on March 6, 1997 on the release track for a defective and missing brake shoe. The correspondence on the property establishes that both repairs were made to the same side of the cars, although it is not clear which Carman was working on which side on the dates in question. There is also no dispute that the weather during this period of time was both snowy and rainy, and that icy conditions existed due to fluctuating temperatures. Beyond those facts, the record contains various possible explanations for the defective and missing brake shoes, including the Carrier's assumption that the Claimant did not properly repair them, for which he was disciplined. While this Board has upheld discipline imposed based upon the fact that employees have signed off on a ticket indicating that a car is ready for service and that car is later found lacking in some fashion, see Second Division Awards 12144, 13198, 13287, in most of such cases, there was no lengthy delay between repair and defect discovery, nor other possible explanations calling into question whether the Claimant's actions were the proximate cause of the safety violation.

As noted by the Organization, the facts of this case are akin, in substantial part, to Second Division Award 13397 on the property, which found similar explanations for a broken brake shoe in comparable weather conditions and the lengthy service of an experienced Carman to outweigh the inference that the employee's performance must have been *improper in causing the defective brake shoe*. Under the circumstances of this case, we must agree with that conclusion, and find that the Carrier failed to meet its burden of proving by substantial evidence that the Claimant's improper job performance was the proximate cause of the defective brake shoes found 10 days later. As there was no argument as to the appropriateness of the remedy on the property, we will sustain the claim.

AWARD

Claim sustained.

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 Second Division

Dated at Chicago, Illinois, this 17th day of April, 2000.