

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Fort Worth and Denver Railway Company

Dispute: Claim of Employees:

1. That under the current agreement, Carmen William Wyatt Shell was unjustly dismissed on February 11, 1980, from the service of the Fort Worth and Denver Railway Company at Fort Worth Shop, Fort Worth, Texas.
2. That accordingly, The Fort Worth and Denver Railway Company be ordered to compensate the aforesaid employee eight (8) hours pay for each work day starting February 11, 1980, until such time as this dispute is settled; that his seniority and vacation rights be unimpaired; made whole for all health and welfare benefits for sick leave benefits; life insurance agreements, plus 6% annual interest on all such lost wages; and employee returned to carrier service.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

Claimant, a Carman Helper (upgraded), employed March 1, 1978, was, as a result of an investigation held February 1, 1980, dismissed from service. On October 14 and 30, 1979, he was working as an upgraded carman. Car repairs to cars SATX 5025 and SATX 1144, respectively, were reportedly made consisting of a change-out of one brake shoe on each car. The brake shoes involved were supplied by Abex Corporation. The owners, City Public Service, installed them on September 25, 1979. Each brake shoe was stamped with an identifying code number prior to installation. By letter of January 21, 1980, the owner informed Carrier of these facts and that on January 16, 1980, each shoe was removed for inspection and measurement. The brake shoes installed on September 25, 1979, were found to be intact. No new shoes were found on either car despite the Carrier billing for the single brake shoe installations of October 14 and 30, 1979.

The Organization protests the conduct of the investigating officer at the hearing and asserts his conduct in denying Claimant the right to question and cross

examine the investigating officer or his assistant prevented a fair and impartial hearing. The Organization also contends the investigating officer improperly adjourned the meeting to hold a discussion with a Carrier witness.

The Board has carefully reviewed the record with respect to the Organization's charges concerning the conduct at the hearing. The investigating officer in this matter is a Trainmaster who had knowledge of material facts under investigation. The Board notes the charges against Claimant were principally developed through the testimony of the General Car Foreman to whom the car owners' representative addressed the January 21, 1980, letter of complaint for work not done. The technical representative from Abex Corporation corroborated those charges and testified to his personal inspection of each of the marked test brake shoes on January 16, 1980. Claimant had sufficient opportunity to challenge this testimony as well as those documents relating to records of car repairs submitted through the General Foreman.

It is, therefore, our conclusion that the restrictions placed upon Claimant by the Hearing Officer were improper, but not to the degree Claimant was denied a fair and impartial hearing.

The record established that Claimant was on duty on the dates in question. The Abex witness clearly corroborated the car owners' claim that no repairs had been performed. On balance, this Board holds the evidence supports the Carrier's finding that Claimant did report repairs to the two cars, SATX 5025 and SATX 1144.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 22nd day of July, 1982.