

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13999
Docket No. 13882
09-2-NRAB-00002-080034**

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

**(Brotherhood Railway Carmen Division of TCIU
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

- "1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rule 13.1, when they held a hearing to determine James Real and Charles Scribner's responsibility to repair and cripple freight cars subsequently rejected by the St. Lawrence and Atlantic Railroad on July 12, 2007.**
- 2. That accordingly, as just and proper relief, remove the formal reprimand from the file and record of James Real and Charles Scribner."**

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.

On June 22, 2007, the Carrier notified the Claimants to appear for a formal Investigation on June 27 that was postponed and subsequently held on July 16, 2007 concerning the following charge:

"Negligence in the Performance of Duty

Specifically on June 12, 2007 you were sent to Danville Junction, Maine to complete repairs to loaded freight cars that had been shopped by an FRA inspector. Freight cars UNPX-120044, DPCX-338, and MSDR-192087 that you indicated repaired on repair tags, were subsequently rejected by the St. Lawrence & Atlantic Railroad for some of the same FRA defects that you indicated had been repaired on repair tags dated June 12, 2007. Furthermore, on that same day, you unnecessarily shopped loaded cement car UNPX-120038 for air brake defects. This same car had earlier been inspected by the aforementioned FRA inspector who took no exception to the air brakes. The car was returned to service without incident. Your negligence in these instances caused unnecessary delays in service to this railroad's customers."

On August 14, 2007, the Claimants were notified that they had been found guilty as charged and were assessed formal reprimands.

It is the position of the Organization that the Carrier erred in issuing the Claimants formal reprimands because it did not meet its burden of proof. It argued that contrary to the Carrier's assertions the Claimants performed the repair work stated on the repair tags regarding freight cars UNPX-120044, DPCX-338 and MSDR-192087 and they properly shopped UNPX-120038 account of defective air brakes. Therefore, it requests that the Claimant's formal reprimands be rescinded and the claim be sustained as presented.

The Carrier argued there is no validity to the Organization's arguments. It submits that the Claimants are guilty as charged. It argued that substantial evidence was produced at the Hearing which refutes the Claimant's arguments that

they did their work correctly and instead proves they did not make the proper repairs and they unnecessarily shopped a loaded freight car delaying its arrival to a customer. Lastly, it argued that the discipline was not too severe and it requests that it not be disturbed.

The Board thoroughly reviewed the transcript and record evidence and finds that freight cars UNPX-120044, DPCX-338 and MSDR-192087 were shopped at Danville Junction, Maine, by an FRA inspector along with 15 other cars. The Claimants were instructed by Assistant Manager T. Witham to go to Danville to repair the shopped cars and stay as long it took to get all of them repaired for return to the St. Lawrence & Atlantic Railroad (SLR). After all of the cars were allegedly repaired by the Claimants, the three cars noted above were kicked back by the SLR for at least one of the same defects. For example, the UNPX-120044 repair tag completed by the Claimants on June 12 indicates that BR&BL handhold clearance was repaired. This car was rejected by the SLR for the same defect that was subsequently repaired by Carman Bennett on June 14, 2007. The DPCX-338 repair tag completed by the Claimants indicates that BR handhold was repaired. This car was returned by the SLR account of improper handhold clearance and was also repaired by Carman Bennett on June 14. The MSDR-192087 repair tag completed by the Claimants indicates B end low drawbar was repaired. That car was also kicked back by the SLR because the B end drawbar was too low. Assistant Manager Witham testified without refutation that he examined MSDR-192087 and did not see any coupler shim installed on the B end as reported by the Claimants on their repair tag. This car was also subsequently repaired by Carman Bennett on June 14, 2007.

The transcript further confirms that the UPNX-120038 repair tag indicates that the FRA defects were repaired, but the Claimants shopped it for air problems. The FRA inspector who looked at the same car took no exception to the air brakes. After the car was shopped, the Assistant Manager inspected it and found no reason to hold the car, so he released it. The car was returned to service, with no further reports that there was an air brake problem.

The record is clear that the aforementioned cars were either improperly repaired, or unnecessarily shopped by the Claimants causing a delay of loaded cars

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to customers. The Carrier met its burden of proof that the Claimants were guilty as charged.

The only issue remaining is whether the formal reprimands were appropriate. The Board finds and holds that the formal reprimands were corrective in nature and not arbitrary, excessive or capricious. The discipline will not be set aside.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 5th day of March 2009.