

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

Award No. 13499

Docket No. 13326

00-2-98-2-10

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 David M. McCaslin 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 David M. McCaslin. 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, the Claimant, a 24 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 Robert Bourgoin, 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 Bourgoin worked the other, and he would fill in the bad order tags indicating the work performed by each. The Claimant testified that he writes what his co-worker tells him was performed 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 the 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 in the past, and his only prior discipline relates to excessive absenteeism.

The arguments raised by the Carrier and the Organization herein are substantially identical to those raised in the companion case before this Board dealing with the discipline imposed on the Claimant's co-worker Bourgoin for these same defects, (see Second Division Award 13498). While the investigations were held separately, the evidence adduced is basically the same. For that reason, we believe that

our conclusions and findings in Second Division Award 13498 are equally applicable herein. We incorporate our rationale as well as our reliance on Second Division Award 13397 therein in holding 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 ten days later. Accordingly, 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.**