

**PUBLIC LAW BOARD NO. 4901**

AWARD NO. 191

CASE NO. 191

**PARTIES TO  
THE DISPUTE:**

United Transportation Union

vs.

The Burlington Northern Santa Fe Railway Company  
(Coast Lines)

**ARBITRATOR:** Gerald E. Wallin

**DECISIONS:** Claim denied

**STATEMENT OF CLAIM:**

“Request in behalf of Southern California Division Conductor M. R. Butrymowicz for removal alleged violations of Rules 1.6, 1.13, 1.15, and 1.16 of the General Code of Operating Rules April 2, 2000 edition from the Claimant’s personal record and the Claimant be reinstated to the service of the Burlington Northern Santa Fe Railway Company, with seniority and all other rights unimpaired and with pay for all time lost including the payment of Health and Welfare Benefits beginning on November 8, 2000, and continuing until returned to service as a result of the Formal Investigation conducted on October 24, 2000.”

**FINDINGS OF THE BOARD:**

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Claimant was dismissed from service for failing to mark up following her release from medical leave of absence effective September 5, 2000. She was charged with unauthorized absence beginning that date and failure to comply with mark up instructions from her supervisor. At the time of her dismissal, Claimant had just over four years of service with the Carrier. Her prior discipline record contained one unrelated incident several years earlier.

This dispute is unusual in that Claimant does not seek reinstatement to her former employment. She resigned from the Carrier’s service effective June 1, 2001 as part of the settlement of a lawsuit. As a result, her Claim seeks only to recover back pay for the period from September 5, 2000 to her resignation date.

No procedural objections were raised during the investigation concerning the manner in which it was conducted, the absence of witnesses, or the means of obtaining their testimony. In addition, our review of the on-property record reveals no irregularities in the process.

According to the Carrier’s evidence, Claimant’s supervisor told her to contact him to mark up when she was medically released to do so. This testimony is corroborated by the presence of a comment in the Carrier’s computerized crew management system. The comment told crew coordinators to inform Claimant to contact local management if she happened to call in for guidance

in marking up. The text of the comment identified Claimant's supervisor by name.

It is undisputed that Claimant was released to unrestricted duty by her psychologist effective September 5, 2000. Moreover, Claimant knew of her release date one week earlier.

In late September, Claimant's supervisor became aware she had been released to duty on effective September 5<sup>th</sup>. He mailed her a certified letter dated September 28, 2000 directing her to mark up no later than October 6, 2000 or to contact him with an explanation why she was unable to do so. Claimant did not comply with the letter. It is undisputed that she did not pick up the letter until October 10<sup>th</sup> because she was out of town visiting family from October 2<sup>nd</sup> through the 9<sup>th</sup>.


According to Claimant's testimony, she did not recall being instructed by her supervisor to contact him upon being released to duty. She did, however, remember participating in the conference call in which her supervisor says such instructions were given to her. Claimant also maintains that she called the crew management office several times attempting to mark up. She learned only that "someone" had a block on the ability to do so. The crew management employees were unable to tell her who had placed the block or who to call to have it removed. Finally, Claimant maintained that she never thought to call her supervisor in inquire about the block or how to have it removed; she testified she was "uninformed."


Careful review of the record fails to find any documentary evidence in corroboration of Claimant's testimony about attempting to mark up. Moreover, she did not seek to obtain the testimony of any of the crew coordinators with who she allegedly spoke when attempting to do so. It is also undisputed that Claimant was engaged in moving her residence during most fo the month of September 2000. Finally, as previously noted, the crew management system did contain the comment with instructions about whom Claimant must call to mark up.

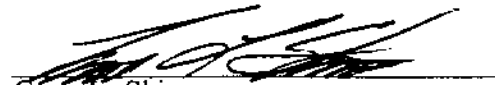
Given the foregoing considerations, the hearing officer was entitled to resolve the credibility issue and the evidentiary conflicts against Claimant. Accordingly, we find the Carrier's determination that she violated the rules charged is supported by substantial evidence in the record. Under the circumstances, we do not find Claimant to be entitled to any remedy.

AWARD:

The Claim is denied.

  
Gerald E. Wallin, Chairman  
and Neutral Member

  
P. L. Patsouras,  
Organization Member

  
Gene L. Shire,  
Carrier Member

DATED: 5-8-03