

PUBLIC LAW BOARD NO. 4901

AWARD NO. 199

CASE NO. 199

**PARTIES TO
THE DISPUTE:**

United Transportation Union

vs.

The Burlington Northern Santa Fe Railway Company
(Coast Lines)

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied.

STATEMENT OF CLAIM:

“Request in behalf of Valley Division Conductor W. C. Tiger for the removal of the alleged violation of Rules 1.6, Conduct, 1.15, of General Code of Operating Rules, Fourth Edition, effective April 2, 2000, and Northern California Division Superintendent’s Notice No. 120, Items 1 and 4 in effect May 19, 1999, from the Claimant’s personal record and that the Claimant be reinstated to the service of the Burlington Northern and Santa Fe Railway Company, Coast Lines, with seniority and all other rights unimpaired and with pay for all time lost including payment of Health and Welfare Benefits beginning on October 23, 2000, and continuing until returned to service as a result of the Formal Investigation conducted on September 26, 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 for unauthorized absence and for failure to comply with instructions. At the time of his dismissal, Claimant had approximately two and one-half years of service. His previous work record contained no related discipline.

According to the record, Claimant was released to return to work at full duty on June 6, 2000 after a period of disability. When he had not marked up for duty by August 2, 2000, his division superintendent sent him a certified letter directing him to contact his terminal manager to mark up within twenty-four hours of receipt. The letter named the Carrier official Claimant was to contact and it gave the contact phone number.

It is undisputed that Claimant did not contact the Carrier official as directed. When nothing had been heard from him by August 24th, a notice of investigation was initiated.

The initial date for the investigation was postponed at the request of the Organization. Claimant did not present himself for the rescheduled investigation. The hearing officer recessed the investigation for six more days to permit Claimant’s attendance. Nonetheless, he was not present when the investigation reconvened.

Our review of the record does not reveal any procedural irregularities of significance. The


investigation was properly scheduled to begin within the time limit specified by Article 13 of the Agreement. The two postponements were not caused by the Carrier.

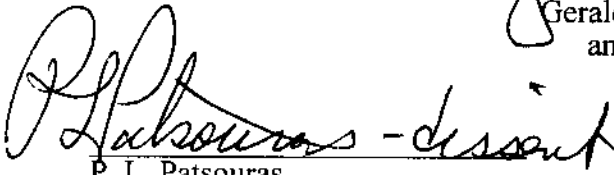
Although the record contains second-hand information from the Claimant's Organization representative, based on a phone conversation one day before the reconvened investigation, it does not explain Claimant's failure to comply with instructions nor does it explain Claimant's continued absence or failure to attend the investigation. The same is true of a letter Claimant faxed to the Carrier dated September 12, 2000 or the essentially illegible purported doctor's report included with the letter. They do not explain the compliance failure, the continued absence, or the non-appearance at the investigation.


Given the state of the record, we find substantial evidence to support the Carrier's disciplinary action.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


P. L. Patsouras,
Organization Member


Gene L. Shire,
Carrier Member

DATE: 5-8-03