

PUBLIC LAW BOARD NO. 4901

AWARD NO. 231

CASE NO. 231

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 Southwest Division Conductor T. W. Crould for the reinstatement to service on the BNSF Railway Company with seniority and all other rights unimpaired and with pay for all time lost including payment of Health and Welfare benefits beginning on August 16, 2002 and continuing until returned to service and removal of the alleged violations of Rules 1.1, 1.1.1, 1.2.5, 1.3.1, 1.13, 1.14, 1.15, and 1.16 of the General Code of Operating Rules, Fourth Edition, in effect April 2, 2000, as supplemented or amended and BNSF Division General Notice 92, dated June 7, 2002 from the Claimant’s personal record.”

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 absence from duty without proper authority beginning June 23, 2002 through July 19, 2002. At the time of the dismissal, Claimant had some twenty-four years of service with the Carrier. His work record contained two previous dismissals and a suspension.

On April 4, 2003, the Carrier offered to reinstate Claimant on a leniency basis with full rights to pursue his wage loss claims to that date. Claimant declined the offer. For our purposes, therefore, Claimant’s dismissal was effectively reduced to a suspension ending on the date of the offer. See Public Law Board 4161, Award No. 11.

Although the notices of investigation and postponement were sent to Claimant’s last known address, he did not attend the investigation. He did, however, attend the presentation of his Claim to this Board. At our hearing, Claimant informed us that the only remedy he was seeking was to have his name and record cleared of the charges. He had applied for a disability annuity and did not wish to return to work.

Our review of the record reveals no procedural irregularities of significance. The record shows that all required notices, including those relating to two postponements, had been sent by certified mail to Claimant’s last known address. Each was signed for by a person at that address. Moreover, Claimant’s Organization representative was present at the investigation. It was not improper, therefore, to proceed with the investigation *in absentia*.

The record also shows that Carrier’s disciplinary decision letter was properly issued within the applicable time limit under the Agreement. The Agreement does not require actual receipt before

the deadline.

On the merits, the record shows that Claimant last performed service at 0220 hours on June 23, 2002. Over the next month, Claimant initiated a series of sick calls, and one personal leave request, with intervening mark ups for service. The pattern and the timing of his actions allowed him to avoid any duty assignments over that time frame. When his supervisor asked him, in mid-July, to provide verification of his medical status, Claimant failed to do so.

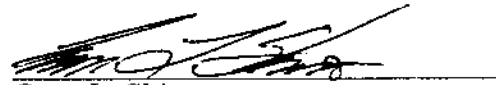
Given the state of the record, we find substantial evidence supports the Carrier's determination that Claimant absented himself from duty without proper authority. In light of his prior record, we do not find the Carrier's action to have been unreasonable.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


Rick Marceau,
Organization Member


Gene L. Shire,
Carrier Member

DATE: 3-4-04