

PUBLIC LAW BOARD NO. 4901

AWARD NO. 212

CASE NO. 212

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 Valley Division Yardman B. G. Carney that the alleged possible violations of Rules 1.6, 1.3.3, 1.13, of the General Code of Operating Rules, in effect April 2, 2000 and Northern California Division Superintendent’s Notice No. 8, Item 18, Attendance Violation in effect March 21, 2001, and Northern California Division Superintendent’s Notice No. 18, Item 18, Attendance Violations, in effect May 22, 2001, be removed from the Claimant’s personal record and that Claimant be reinstated to the service of the BNSF 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 September 18, 2001 and continuing until he is returned to service.”

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.

This case confronted the Board with the dismissal of Claimant for failure to comply with the Carrier’s Availability Policy for attendance. At the time of his dismissal, Claimant had less than three years of service with the Carrier. His prior record reveals a reprimand, two record suspensions, and a previous dismissal for violations of the policy. As noted in Award No. 213, the dismissal was found to be procedurally defective and was set aside in its entirety.

Our review of the record does not disclose any procedural irregularities of significance in this case. The investigation for the rolling three-month attendance review period in question here was scheduled in compliance with the thirty-day time limit per Article 24 of the parties’ Agreement. There is no dispute that the statistics for the three-month period, April through June of 2001, were first available for review by Claimant’s supervisor on July 8, 2001. The investigation was scheduled to be held on August 1st, which was within the 30-day time limit, but was postponed at the request of the Local Chairman.

The basic facts concerning Claimant’s absenteeism are not in dispute. The Carrier promulgated its Availability Policy in early 2000 to become effective March 1, 2000. The policy determines the amount of allowable absence based on the kind of assignment held by a given employee. For absenteeism outside of the allowable guidelines, the policy prescribes a four-step schedule of progressive discipline. A formal reprimand is specified for the first infraction followed by record suspensions of ten and twenty days for subsequent infractions. Record suspensions,

however, do not actually result in lost time; they are record entries only. The discipline schedule culminates in dismissal for the fourth infraction. A period of twelve consecutive months of compliance extinguishes the effectiveness of prior steps and returns the employee to a "clean slate" status.

In identifying non-compliance, the policy directs that a rolling three-month period be examined. The applicable attendance statistics are available for supervisory review by the 8th of the month following the last of the three months under review.

It is a well settled principle of labor relations in the railroad industry and elsewhere that, unless restricted by specific provisions in the applicable collective bargaining agreement, employers have the inherent right to establish and enforce reasonable attendance rules and regulations. No such specific restrictions have been identified on this record. It is axiomatic, therefore, that the Carrier need not retain the services of an employee indefinitely who either cannot or will not be available for work with reasonable regularity. When the record demonstrates that an employee's absenteeism continues to be excessive despite reasonable corrective efforts undertaken the Carrier, the employment relationship may properly be terminated. For a brief survey of prior awards on this subject in the railroad industry, see Third Division Award No. 27801, Award No. 17 of PLB 3566, Award No. 374 of PLB 717, and Award No. 6 of PLB 4121.

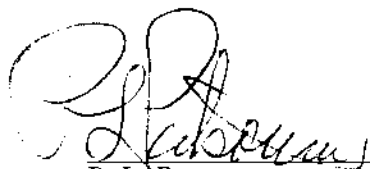
Claimant's attendance statistics for the three-month period from April through June of 2001 were not in dispute. During the investigation, certain refinements to his unavailability were made which reduced their overall impact. Nonetheless, Claimant failed to comply with the attendance guidelines for the period. Incidentally, he also exceeded the allowable absences in each of the three months.

Among other contentions, Claimant maintained that he did not understand the policy. This contention does not mitigate the situation. The policy was issued more than one year earlier to all employees. If any employee had questions about its application, there was ample time to inquire. Therefore, Claimant's supervisor was not unreasonable in rejecting this contention.

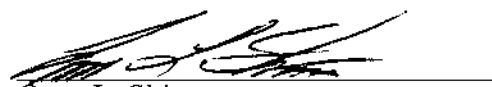
As noted previously, Claimant's prior work record shows that the Carrier has exhausted all of the remedial steps called for in the schedule of progressive discipline notwithstanding our Award in Case No. 213. Under the circumstances, we do not find any proper basis for altering the Carrier's action.

AWARD:

The Claim is denied.


P. L. Patsouras,
Organization Member


Gerald E. Wallin, Chairman
and Neutral Member


Gene L. Shire,
Carrier Member

DATE: 12-29-03