PUBLIC LAW BOARD NO. 4901

AWARD NO. 219

CASE NO. 219

PARTIES TO THE DISPUTE: United Transportation Union

vs.

The Burlington Northern Santa Fe Railway Company (Coast Lines)

ARBITRATOR: Gerald E. Wallin

DECISIONS: Claim sustained in accordance with the Findings.

STATEMENT OF CLAIM:

> "Request in behalf of Northern California Division Yardman M. R. Wylie for the removal of the Record suspension of ten (10) days, and a one (1) year probation period received by letter dated November 12, 2001 from Superintendent Operations R. S. Powell and exoneration of the alleged violation of Rules 1.6, 1.3.3, & 1.13 of the General Code of Operating Rules, effective April 2, 2000; Northern California Division Superintendent's Notices No. 18 of May 22, 2001; Notice No. 23 of July 12, 2001; Notice No. 24 of July 18, 2001; Notice No. 26 of July 30, 2001, and Notice No. 29 of August 29, 2001, and that the Claimant be allowed all time lost as a result of attending the Formal Investigation conducted on October 17, 2001."

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 disciplined for exceeding the absenteeism limits contained in the Carrier's attendance guidelines. At the time of his discipline, Claimant had some twenty-nine years of service. His previous work record contained one prior instance of discipline for excessive absenteeism within one year under the Carrier's attendance guidelines. This prior instance was the subject of Award 197 of this Board.

The actual application of the Carrier's attendance guidelines was discussed in detail in Public Law Board No. 6345, Award No. 38. This Board has also addressed the operation of the guidelines in our Awards 197, 212, 213, and 217. The operation of the policy is thus incorporated by reference and need not be repeated here. Suffice to say that the Carrier was found to be within its rights to promulgate the policy in question and to administer the policy accordingly.

The Organization advanced several procedural objections to the Carrier's actions. Our review of the record does not show them to have merit. However, the primary objection warrants comment. It is based on Agreement Section 24(a), which requires that investigations be held within thirty days from the date of occurrence of the incident to be investigated. Because the Carrier's attendance guidelines are based on a rolling three-month review period, the "occurrence" date must,

of necessity, await the end of each three-month period. The period in question encompasses the months of June, July, and August of 2001. Thus, on this record, the trigger date for the Article 24(a) time limit could have been no earlier than August 31st. The instant record does not establish any later date for the start of the time limit. Accordingly, the Carrier was obligated to hold the investigation not later than September 30, 2001 unless there was a permissible postponement. The investigation was originally scheduled to be held on September 26th. It was, therefore, properly scheduled initially in compliance with the Agreement. By overnight letter dated September 25, 2001, the Carrier sought to postpone the investigation until October 3, 2001 on its own initiative. While the propriety of this unilateral rescheduling is debatable, it was eclipsed by the Organization's letter, also dated September 25, 2001, that requested a postponement until October 19, 2001. The Organization requested the postponement before there was any arguable time limit violation. Thus, any potential procedural error was cured before it ripened. We do not find any of the other procedural matters raised by the Organization to have merit.

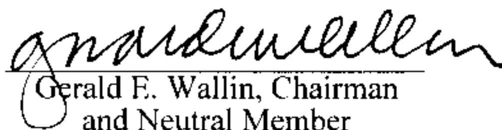
On the merits, Claimant does not dispute his absenteeism statistics; he was absent from work without a proper excuse on seven days during the three-month period from June through August 2001. This amount of absenteeism is in excess of that permitted by Carrier's policy for the three month period as well as each of the months in question. Personal illness of a routine nature is not exempt from the operation of the policy.

Given the numbers associated with Claimant's absenteeism, the Carrier had a proper basis for taking disciplinary action pursuant to its policy. The discipline in question, however, is the second step prescribed by the policy. In Award No. 197 of this Board, we were required overturn Claimant's prior reprimand, not because of the merits of the case, but because of a technical procedural irregularity in the evidentiary record. Thus, Claimant must be treated now as a first-time offender. Accordingly, his ten day record suspension must be reduced to a formal reprimand in accordance with the first step of the Carrier's policy.

It is our further understanding that Claimant's record suspension did not result in any actual economic loss. If this is incorrect, then Claimant must be made whole for all losses resulting from the record suspension.

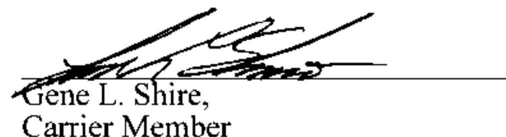
AWARD:

The Claim is sustained in accordance with the Findings.



Gerald E. Wallin, Chairman
and Neutral Member

R. L. Marceau,
Organization Member



Gene L. Shire,
Carrier Member

DATE: 4-6-04