

PUBLIC LAW BOARD NO. 4901

AWARD NO. 239

CASE NO. 239

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 I. A. Elizondo for the reinstatement to the service of the Burlington Northern Santa Fe Railway Company, Coast Lines, with seniority and all other rights unimpaired, with pay for all time lost, from November 6, 2002.”

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 an attendance infraction on October 9, 2002. At the time of his dismissal, Claimant had only some seventeen months of service with the Carrier. His work record contained seven previous instances of discipline for attendance that resulted in three 10-day record suspensions and two 20-day record suspensions.

The record reveals no procedural irregularities. Although Claimant did not attend the investigation, he was properly notified by certified letter sent to his last known address sixteen days in advance of the hearing. A copy was sent to the Local Chairman. In addition, Claimant personally signed for receipt of a copy of the notice two days prior to the hearing.

When Claimant did not appear for the investigation, the hearing officer called a recess to permit a search for Claimant. He could not be found and there was no evidence of any attempts by him to contact the Carrier regarding his whereabouts. Under the circumstances, it was proper for the hearing officer to conduct the hearing *in absentia*.


Regarding the merits of the Carrier's action, the record shows that Claimant was called at 4:54 a.m. on October 9, 2002 for a yard assignment as helper with an on-duty time of 7:15 a.m. Claimant accepted the assignment and gave no indication of illness or physical impairment at the time of the call. More than two hours later, at 7:09 a.m., which was only six minutes prior to his on-duty time, Claimant called to lay off due to an alleged throat infection. No corroborating evidence is in the record. The record is also devoid of any evidence to corroborate the family emergency

contention that Claimant relayed through the Organization to explain why he did not attend the investigation.

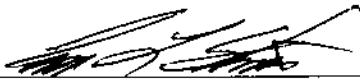
Given the foregoing circumstances, the record supports the Carrier's determination that Claimant violated Rule 1.15 as charged. In light of his numerous previous attendance infractions, we do not find the penalty of dismissal to be improper.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


~~P. L. Patsouras~~, R. L. MARCEAU
Organization Member


Gene L. Shire,
Carrier Member

DATE: 3-4-04