

PUBLIC LAW BOARD NO. 4901

AWARD NO. 217

CASE NO. 217

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 Northern California Division Yardman T. L. Peeler for the reinstatement to Service of the Burlington Northern Santa Fe Railway Company, Coast Lines, with seniority and all other rights unimpaired, and with pay for all time lost, from December 14, 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 dismissed for violating the Carrier's attendance guidelines. At the time of his dismissal, Claimant had less than five years of service. His previous work record contained three prior instances of discipline for excessive absenteeism within one year under the Carrier's attendance guidelines.

The actual application of the Carrier's attendance guidelines was discussed in detail in Public Law Board No. 6345, Award No. 38. The operation of the policy was adequately described there 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 certain procedural objections to the Carrier's actions. Our review of the record does not show them to be based on a proper foundation.


On the merits, Claimant does not dispute his absenteeism statistics; he was absent from work on 53½ days during the three-month period from August through October 2001. This amount of absenteeism is well in excess of that permitted by Carrier's policy for the three month period as well as each of the months in question.

Given the numbers associated with Claimant's absenteeism, the Carrier had a proper basis for taking disciplinary action pursuant to its policy. When reviewing the disciplinary penalty of dismissal, it is noted that Claimant received progressive discipline under the same policy on three prior occasions during calendar year 2001. In each instance, Claimant waived his rights to an


investigation and to challenge the reasonableness of the policy or the progressive discipline imposed. As a result, on his fourth instance within one year, we do not find the Carrier's action to have been inappropriate, harsh, arbitrary, or excessive.

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