

PUBLIC LAW BOARD NO. 4901

AWARD NO. 173
CASE NO. 173

**PARTIES TO
THE DISPUTE:**

United Transportation Union
(ATSF Coast Lines)

vs.

Burlington Northern Santa Fe Railway Company

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained in accordance with the Findings

STATEMENT OF CLAIM:

"Request in behalf of Winslow Conductor G. S. Parker for the removal of the Level S Suspension of thirty (30) days that commenced on September 25, 1998, the assigned Probation period of three (3) years, and exoneration of alleged violation of Rules 1.1, 1.1.1, 1.3.3, 6.2, 6.3, 14.1, and 14.2 of the General Code of Operating Rules, Third Edition, and Arizona Division Superintendent's Notice 32, Item 39 in effect August 1, 1996, from the Claimant's personal record and paid for all time lost beginning March 19, 1998, August 27th and 28th, and from September 25, 1998, and continuing until returned to service on October 24, 1998, as a result of the Formal Investigation conducted on March 19, 1998, and August 27th and 28th,"

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 after the evidence developed at the investigation begun March 19, 1998 and concluded on August 28, 1998 convinced the Carrier that he permitted his train to move out of East Needles onto the main line track of the Seligman West Subdivision without proper authority on January 29, 1998. At the time of his discipline, Claimant had more than nineteen years of service. His prior disciplinary record showed three entries, one of which arose out of a 1996 track warrant violation.

The Organization raised a wide variety of procedural objections during the lengthy hearing. None of them are found to have denied Claimant due process or a fair and impartial investigation. For examples, it is well settled that past involvement with Claimant's discipline history does not preclude a Carrier official from serving as a hearing officer. Similarly, Article 13 requires only that the hearing notice inform Claimant of "... the specific charge or of the case to be investigated ..." It does not explicitly require the citation of all possible rules in the notice nor does it prevent the discussion of additional rules as the hearing unfolds.

The rules involved in the investigation were read verbatim into the record on March 19, 1998 when the hearing began. When reconvened on August 27th after several postponements, the record confirms that the Organization and Claimant had copies of the March 19th transcript. Nevertheless, the rules were read verbatim into the record once again. Under such circumstances, we do not find

the Carrier's failure to include written copies of the rules with the second transcript to constitute prejudicial error.

The engineer on Claimant's crew accepted his discipline under a waiver procedure. He thus became a Carrier witness at the reconvened hearing instead of appearing as a principal of the investigation. The Organization objected to this change of status. We find nothing in the parties' Agreement that prevents such a development.

Although the dispatcher who issued the track warrant in question provided live testimony at the hearing, the Organization objected to the absence of the dispatcher from an adjacent territory as well as the manager of corridor operations. No basis was established in the record to show that their testimony was necessary to develop the essential facts, which is the test established by Article 13. Even if their tangential knowledge was entirely favorable to Claimant, they had no involvement in the issuance of Track Warrant #1997. Thus, their knowledge did not relate, directly or indirectly, to the question of whether Track Warrant #1997 authorized Claimant to move his train out onto the main line as he did. Accordingly, their absence did not constitute error.

The remaining procedural objections raised by the Organization and Claimant are similarly found to lack proper support in evidence, precedent, or Agreement language.

Turning to the merits, we find the record to contain substantial evidence that Track Warrant #1997 did not permit Claimant's train to occupy the main line track as it did. Although it was a valid track warrant, lines 2, 3, and 4 were left blank; thus the track warrant did not authorize Claimant's train to proceed east of the signal at Mile Post 574.7, it served only to inform Claimant of applicable bulletins. Although Claimant offered an explanation based on other rules, his testimony on page 60 of the transcript shows that having a check mark and specific instructions on line 2 to authorize occupation of the main line was a procedure Claimant had always used and he agreed with it. It is also unrefuted that Claimant did not take exception to the handwritten alteration of Track Warrant #1997 by the engineer. Carrier's rules prohibited such modifications.

As a result of the foregoing, Carrier's determination that Claimant had violated Rules 1.1, 1.1.1, 1.3.3, 6.3, 14.1, and 14.2 is supported by substantial evidence in the record.

However, two other violations are not found to be sufficiently proven. The record does not adequately establish that Claimant was required to complete a Signal Awareness Form when the appropriate Trip Report Form was unavailable for the Seligman West Subdivision. Accordingly, the Carrier determination of a violation of Superintendent's Notice #39 lacks the requisite evidentiary support. Similarly, the record does not establish a violation of Rule 6.2.

In light of the foregoing, Claimant's work records must be appropriately revised to exonerate him for the violations not proven.


The proven violations, however, did involve safety rules and seriously jeopardized the safety of the Carrier's operations. The discipline consisting of a Level S suspension of thirty days and the three-year probation period is warranted and consistent with the Carrier's Employee Performance Accountability Policy. The discipline, therefore, should stand as imposed.

AWARD:


The Claim is sustained in accordance with the Findings.



Gerald E. Wallin, Chairman
and Neutral Member



P. L. Patsouras,
Organization Member



Gene L. Shire,
Carrier Member

DATE: 10/31/02