

PUBLIC LAW BOARD NO. 4901

AWARD NO. 220

CASE NO. 220

**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 Southern California Division Conductor K. E. Staley for removal of the Level S 60-day actual suspension from his record and with pay for all time lost, beginning October 19, 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 assessed the discipline in controversy for allowing his train to enter Main Track 2 at East Franconia without proper authority on October 19, 2001. Claimant had more than twenty-eight years of service at the time. His prior work record up to that point contained two disciplinary instances within a three-year period. The first was a deferred suspension of five days in January 2000. The latter was a Level S thirty-day suspension and three-year probation period imposed nine months earlier for occupying Main Track 2 at Seligman without authority.

The Organization made several objections to the discipline in its submission. Both lack of merit as well as the procedural stature of certain of the objections require their rejection. As a general matter, procedural objections must be raised at the earliest opportunity to do so or they are deemed waived. No objections were made at the investigation. Accordingly, all such objections which should have been made at that time are waived. Thus, any objection to the absence of the dispatcher as a witness is waived. In addition, however, the record, which describes the dispatcher's involvement in detail, shows that his presence was not required. The recording of his conversation showed he was not in possession of any material facts that required his testimony.

A similar analysis applies to the fact that Claimant was withheld from service. No objection was made at the hearing, thus the objection may not be successfully made later. On the merits, however, the objection is equally unfounded. Occupying main track without authority is a serious situation. The Carrier did not act improperly in considering the situation to be an aggravated matter.

The Organization did raise a time limitation issue promptly. However, it is clear that Carrier's disciplinary decision complied with the applicable time limit when it was mailed on

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