

PUBLIC LAW BOARD NO. 4901

AWARD NO. 206
CASE NO. 206

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 of Arizona Division Conductor M. J. Stabnow for the dismissal from service and the alleged violations of Rules 1.1, 1.1.1, 1.6(2)(6)(7), and 1.13 of the GCOR 2000, Fourth Edition in effect April 2, 2000, be removed from the personnel record and that the Claimant be re-instated to service of the BNSF with seniority and all other rights unimpaired and with pay for all time lost including the payment of Health and Welfare Benefits beginning May 31, 2001 and continuing until returned to service as a result of the Formal Investigation conducted on June 5, 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.

Unauthorized absences, we do not find the discipline to be harsh or unreasonable.

Claimant was dismissed for two types of misconduct arising out of an incident at Adamana, Arizona on May 5, 2001: He failed to provide service and was discourteous to a customer on that date; and he failed to comply with his supervisor's instructions regarding supplying information in response to the customer's verbal and written complaint.

No procedural irregularities of significance were seen in our review of the record. Although a contention that Carrier failed to require the presence of a material witness was made, it was not done at the investigation. Such objections are deemed waived if not made at the first opportunity to do so.

Turning to the merits, the Organization objected to the hearsay nature of the customer's complaint because none of the customer's employees who interacted with Claimant provided live testimony at the investigation. In this case, however, a Carrier official testified that Claimant had admitted making the remarks to the customer's employees that were described in the customer's written complaint. Moreover, Claimant's own testimony confirmed the substance of the statements attributed to him in the customer's complaint. Given these facts, the customer's complaint was sufficiently corroborated to be entitled to full evidentiary consideration.

Accordingly, we find substantial evidence in the record to support the Carrier's determination

that Claimant wanted to leave work early on Saturday, May 5th because he had a long drive home. When he learned that the customer was not quite ready to have its cars spotted on track 8334, Claimant informed the customer's employees that he had a 5-hour drive after servicing them and that he was not going to wait and if the ladies in the office had a problem with that they could take it up with someone named Kelly. Thereafter, Claimant's crew spotted some of the customer's cars on track 8335, left, and did not return later with the remaining cars.

According to his testimony, Claimant said he was only kidding with the customer's employees and planned to return to finish the job but could not do so because he was diverted to other work by a dispatcher. The Carrier was entitled to discount the credibility of this explanation because the customer's complaint shows that Claimant was not perceived to be kidding. In addition, it is clear that Claimant took no steps to ensure the customer was serviced later that day after it became apparent that his crew would not be able to do so.

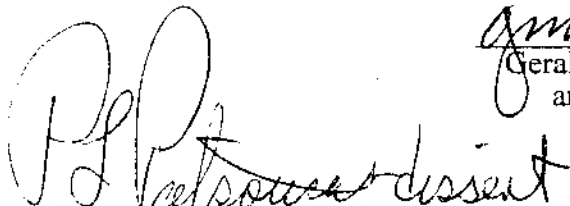
When the customer's written complaint was received on May 7th, Claimant's supervisor asked him to supply a statement about the incident. Claimant agreed to provide it the following Wednesday, May 9th. He did not. There is no evidence he tried to fax it earlier as agreed. Indeed, his statement is not dated until May 11th.

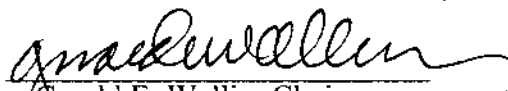
Given the foregoing considerations, we find the record to contain substantial evidence that Claimant engaged in the misconduct for which he was charged. We note also that his prior work record contained six instances of significant discipline in little more than four years previous to the incident in question. The last previous instance was a Level S suspension of 30 days only three months earlier that also carried with it a 3-year probationary period.


Under the circumstances, we find no proper basis for disturbing the Carrier's disciplinary action.

AWARD:

The Claim is denied.


P. L. Patsouras,
Organization Member


Gerald E. Wallin, Chairman
and Neutral Member


Gene L. Shire,
Carrier Member

DATE: 12-1-03