

PUBLIC LAW BOARD NO. 4901

AWARD NO. 192

CASE NO. 192

**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 Conductor D. R. Nelson for the removal of alleged violations of Rules 1.6, and 1.13 of the General Code of Operating Rules April 2, 2000 edition from the Claimant’s personal record and his reinstatement to the 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 including the payment of Health and Welfare Benefits beginning on October 17, 2000, and continuing until returned to service as a result of the Formal Investigation which began on September 18, 2000, postponed and continued on September 25, 2000.”

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, after slightly more than two years of service, for negligence and failure to comply with instructions. His work record contained two prior instances of discipline. One of them, just less than one year earlier, was for being insubordinate and argumentative. Claimant waived access to the discipline process and accepted a Level S 30-day suspension for that infraction.

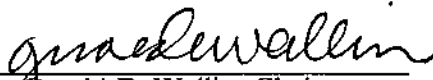
The Organization advanced a number of procedural objections in its submission. Review of the record, however, reveals that the objections were not raised on the property at the first opportunity to do so. As a result, they are waived. The remaining objection, that Claimant was singled out from the rest of the crew, is not supported by the evidence. The circumstances depicted by the record did not call for scrutinizing the other crew members.

On the merits, it is undisputed that Claimant was found in possession of outdated operating rules and instructions on August 22, 2000. While there is conflicting testimony on this point, a Carrier official testified that Claimant was directed to obtain current documents before his next tour of duty. This constitutes substantial evidence that Claimant was given a specific deadline for accomplishing the directive. It is also undisputed that Claimant was inspected again on August 24th as he reported for his *second* tour of duty after receiving the directive. Claimant still had not taken any action to obtain current materials.

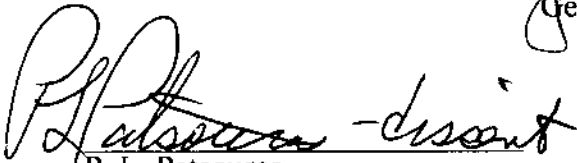
Given the foregoing considerations, including Claimant's past discipline history, we find the Carrier had a proper basis for assessing the discipline it did. Moreover, the record presents no persuasive factors in mitigation of this penalty; it is apparent from the evidence that Claimant had done essentially nothing for two years to try to keep his documents current.

AWARD:


The Claim is denied.



Gerald E. Wallin, Chairman
and Neutral Member



P. L. Patsouras,
Organization Member



Gene L. Shire,
Carrier Member

DATED: 5-8-03