

**PUBLIC LAW BOARD NO. 4901**

AWARD NO. 178

CASE NO. 178

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 B. C. Prince, Jr. for the removal of alleged violation of Rules 1.1, 1.1.3, 1.1.4, 1.2.5, 1.2.7, 1.3.1, and 1.6 of the General Code of Operating Rules BNSF Version with revisions No. 1, in effect 0001 April 1, 1998, from his personal record and for his reinstatement to the service of the Burlington Northern and Santa Fe Railway Company, Coast Lines, with seniority and all other rights unimpaired and with pay for all time lost as the result of the Formal Investigation conducted on September 30, 1999.”

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 from all service for falsifying a personal injury report and other rule violations related to the reporting of injuries and unsafe conditions. At the time of his dismissal, Claimant had been employed for approximately fifteen months, however furlough time reduced his total service time to less than one year.

Our review of the record does not reveal any procedural deficiencies of significance. First, it is well settled that the performance of multiple roles in the investigation and discipline process by the Carrier official who also serves as hearing officer is not *per se* objectionable; such service does not, by itself, render the process defective. Second, although there were contentions of missing witnesses made in the Organization's submission, there were no such requests at the investigation. Moreover, it is clear from Claimant's own testimony that there were no witnesses to his claimed injury. Thus, there appears to be no basis for concluding that the missing van driver and other witnesses had any knowledge necessary to develop the relevant facts. Finally, although Claimant did not *receive* written notification of the discipline until November 3, 1999, it was mailed within the time limit established by the parties' Agreement. That Agreement does not explicitly require receipt of notice within the time limit. In addition, the Carrier's assertion that Claimant was verbally informed of the decision on October 29, 1999, while working light duty, was never effectively refuted on the property.

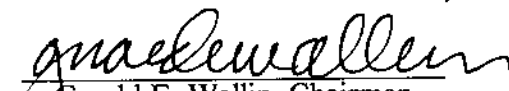
Turning to the merits, the record is found to contain sufficient evidence to warrant the Carrier's conclusion that Claimant falsified his report of injury to his left wrist and did not comply with other rules. When he reported the matter some five days after the alleged injury, he could not recall the time, date, place or other circumstances with clarity. He admitted that he did not believe he had injured himself at the time. There were no signs of injury such as cuts, scratches, bruises or abrasions. He had no lingering pain. He finished the approximately three hours of his work shift, which included some overtime, without any impairment. He said nothing about an injury to any of his co-workers. He made no report at the time regarding the alleged presence of large ballast that may have contributed to uneven footing in the yard. In addition, it is undisputed that Claimant had a prior off-duty injury to his left upper extremity that involved restricted movement of the same wrist. Finally, although he claimed to have begun feeling left wrist pain and stiffness within a few days, Claimant still did not report any injury for several more days thereafter.

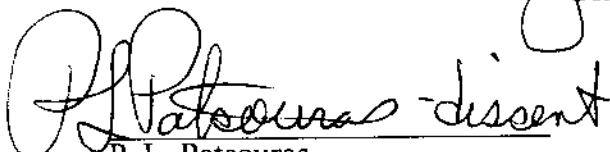
Despite the foregoing, our review does not support the Carrier's determination that Claimant also violated Rule 1.1.4. By its terms, the rule relates to the inspection of tools and equipment for defects. Such tools and equipment do not appear to have been involved in the instant dispute.


Given that the Carrier's remaining determinations are supported by substantial evidence in the record, we find no basis for disturbing the discipline.

AWARD:

The Claim is denied.

  
Gerald E. Wallin, Chairman  
and Neutral Member

  
P. L. Patsouras,  
Organization Member

  
Gene L. Shire,  
Carrier Member

DATE: 10/31/02