

PUBLIC LAW BOARD NO. 4901

AWARD NO. 188

CASE NO. 188

**PARTIES TO
THE DISPUTE:**

United Transportation Union

vs.

The Burlington Northern Santa Fe Railway Company
(Coast Lines)

ARBITRATOR: Gerald E. Wallin

DECISIONS: Claim denied

EMPLOYEES' STATEMENT OF CLAIM:

"Request in behalf of Southern California Division Yardman R. J. Thomas for the removal of the violation of Rules 1.3, 1.2.7, and 1.6 of the General Code of Operating rules in effect April 2, 2000 from the Claimant's 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 including payment of Health and Welfare Benefits beginning on May 9, 2000 and continuing until returned to service as a result of the Formal Investigation conducted on June 7, 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 for falsification of documentation regarding an injury he allegedly sustained in early 1999. At the time of the disciplinary action, Claimant had just over five years of service. His prior work record contained no related discipline.

The Organization advanced a number of procedural objections in opposition to the Carrier's action. Our review of the transcript, however, did not reveal any irregularities of significance. For examples, the allegation of falsification did not surface until some fifteen months after an *off-duty* injury was reported to the Carrier. Therefore, the notice of investigation was issued and the investigation was scheduled in compliance with Rule 24(a). The discrepancy about the date of the injury contained in the notice is directly attributable to Claimant, who admitted he provided the incorrect date to Carrier's claims agent. Withholding Claimant from service pending the investigation does not constitute discipline or prejudgment in violation of Rule 24. Indeed, the rule recognizes that an employee may be withheld for aggravated circumstances. Finally, for the last example, the Agreement does not explicitly require the Carrier to provide the Organization with all known evidence in advance of the investigation.


Substantial evidence regarding the merits of the Claim supports the Carrier's determination that Claimant originally reported an off-duty injury and later attempted to reverse that stance. It is

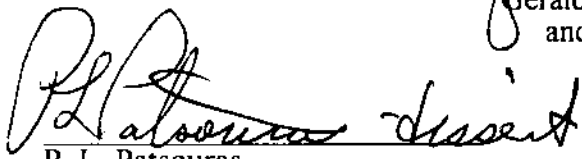
undisputed that Claimant did not seek reimbursement for lost pay due to the injury for more than one year afterward. Approximately fifteen months after the alleged injury, Claimant approached Carrier's claims agent to obtain lost pay on the ground that he had sustained an on-duty injury. During the investigation, Claimant could not recall any details about when, where, or how he was allegedly injured on the job. A Carrier official testified that Claimant told him the alleged back injury occurred off-duty. Finally, Claimant admitted that he knew his alleged injury was originally being handled as an off-duty matter.


Given the nature of the misconduct demonstrated by substantial evidence, we do not find Carrier's disciplinary action to be unwarranted or unreasonable.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


P. L. Patsouras,
Organization Member


Gene L. Shire,
Carrier Member

DATE: 5-8-03