

PUBLIC LAW BOARD NO. 4901

**AWARD NO. 168
CASE NO. 168**

**PARTIES TO
THE DISPUTE:**

United Transportation Union
(ATSF Coast Lines)

vs.

Burlington Northern Santa Fe Railway Company

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied

DATE: December 28, 2001

STATEMENT OF CLAIM:

"Request in behalf of Winslow Conductor M. H. Bannon for the removal of the Level S Suspension of thirty (30) days, that commenced on August 10, 1998. In addition, the assigned Probation period of three (3) years and the statement notifying the Claimant if he commits another serious rule violation during the tenure of the probation period, the Claimant would be subject to dismissal by letter the Claimant received by letter dated August 5, 1998, and exoneration of the alleged violations of Rules 1.1, 1.1.1, 1.1.2, 1.1.3, 1.2.5, 1.2.7, 1.3.1 (Paragraph "Explanation"), 1.4, 1.6 (No. 1), and 1.13 of the General Code of Operating Rules, BNSF Revisions No. 1 effective April 1, 1998, and Rule TY&E Safety Supplement No. 1 effective April 1, 1998, from his personal record and that he be reinstated to the service of the Burlington Northern and Santa Fe Railway Company, Coast Lines with seniority and all other rights unimpaired and pay for all time lost including Welfare Benefits beginning on August 10, 1998, and continuing until returned to service as a result of the Formal Investigation conducted on July 13, 1998 involving Winslow Conductor M. H. Bannon."

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.

The basic facts are not in dispute. Claimant hyper-extended his right knee on May 4, 1998 when his foot slipped into a ballast void as he attempted to step onto a tie. He heard a popping sound but felt no pain. He did not report an injury that day or the next when he awoke with stiffness in the knee. He deadheaded home by taxi on May 5th with two other employees but said nothing to them about any injury. After arriving home from the deadhead, he told his wife, "I think I did something to my knee." Nonetheless, he felt it was "... too late to do anything about it now since I'm going on vacation, got nine days, it'd probably go away." On May 6th, the knee was sore enough that Claimant packed it in ice. Still he did not report an injury. On May 7th, the knee became more swollen and painful. Claimant again packed it in ice. Claimant did not report the injury until the following day on May 8th.

While the Organization objected to the propriety of the investigation due to missing witnesses, we find the objection lacks merit. The record does not show how or in what manner the missing witnesses could have contributed information about the late reporting of the alleged injury.

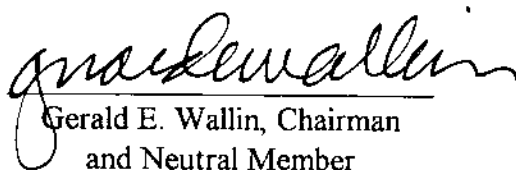
The record contains substantial evidence establishing that Claimant knew he had a reportable injury as early as May 5th and certainly by May 6th. Carrier rules, with which Claimant admitted he was familiar, required him to immediately report the injury by the first available means of communication. The record is clear he failed to do so for reasons which do not excuse his actions.

Carriers are entitled to treat injury reporting failures as serious rule infractions for two major reasons: First, the late reporting of hazardous conditions delays their correction and potentially exposes other employees to the same hazards, and, second, any period of off-duty time between the occurrence of an alleged injury and the reporting of it, however brief, exposes the Carrier to the possibility of fraudulent injury claims.

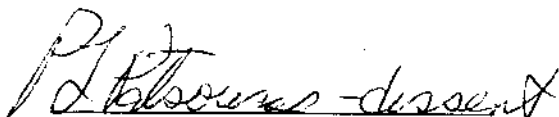
Under the circumstances, we do not find the discipline imposed to be unreasonable. The discipline does, however, require some additional commentary by us. The discipline included a three-year probationary period regarding similar misconduct with a warning of potential dismissal for a repeated infraction. Our findings herein are limited to the facts of this dispute. We make no findings about the gravity of possible future incidents or whether a recurrence during the probationary period would, in and of itself, warrant the penalty of dismissal.

AWARD:


The Claim is denied.



Gerald E. Wallin, Chairman
and Neutral Member



P. L. Patsouras,
Organization Member



Gene L. Shire,
Carrier Member