

PUBLIC LAW BOARD NO. 4901

AWARD NO. 183

CASE NO. 183

**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 R. A. Steel for the removal of alleged violation of Rules 1.1.1, 1.1.2, 1.1.3, 1.2.5, and 1.6 of the General Code of Operating Rules, effective April 1, 1998, (revisions up to and including January 31, 1999) and Rules S-1.2.8, S-1.5.2, S-1.5.4, S-25.1, and S-27.2 of the Safety Supplement for train, engine and Yard Employees 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 including payment of Health and Welfare Benefits beginning on August 7, 1999, and continuing until returned to service as a result of the Formal Investigation conducted on September 1, 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 for violation of safety rules and for failing to timely report an alleged injury to his back. At the time of the investigation, Claimant had approximately eighteen months of service with the Carrier. His work record contained discipline for three prior infractions. Two were within the year before his dismissal: A suspension for failure to stop short of a red signal and a first-time Rule G violation.

Our review of the record reveals no procedural deficiencies of significance. Although Claimant did not appear for the investigation, examination of the notice, which was sent to his address by certified mail, shows that it complied with the information requirements of Article 13 of the parties' Agreement. The Organization was present for the hearing. The actions of the Carrier in withholding Claimant from service pending the investigation do not constitute an improper suspension in violation of Article 13 nor does it constitute prejudgment of Claimant's guilt.


The facts of Claimant's alleged injury were established by the testimony of Carrier officials who interviewed him and from Claimant's handwritten statement. Taken together, they constitute substantial evidence that shows Claimant used an improper procedure to turn the angle cock on a car

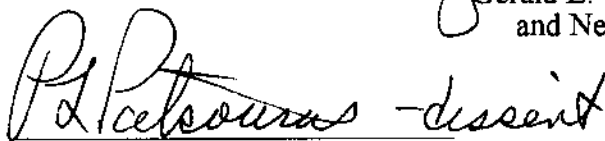
he was setting out at the San Bernardino Yard. In short, rather than walk around to the other side of the car, Claimant leaned over the knuckle and reached to his greatest extent to turn the angle cock. During this procedure, he felt pain in his back. Despite knowing the Carrier's rules requiring the immediate report of the injury by the first means available, Claimant chose not to following the rules. Instead, he commented to his engineer, upon reboarding the locomotive, that he needed to exercise more and lose weight because his back was bothering him as it had before. Claimant went off duty at approximately 12:30 p.m. on August 3rd. He called in to lay off from work on August 4th because he had a dental appointment scheduled for August 5th and did not want to miss it. When his alleged back pain persisted into August 5th, Claimant also saw his doctor that day. Despite receiving pain medication, Claimant still did not report any injury to the Carrier until approximately 10:30 a.m. on August 6th. Thus, the late reporting charge is also supported by substantial evidence in the record.


A late report of an on-duty injury is a serious offense under Carrier's Policy for Employee Performance Accountability. In light of the two other previous serious infractions that Claimant accumulated in the year prior to his dismissal, we find no proper basis for disturbing the Carrier's action.

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