

PUBLIC LAW BOARD NO. 4901

AWARD NO. 67
CASE NO. 67

PARTIES TO
THE DISPUTE: United Transportation Union (CT&Y)

vs.

Atchison, Topeka and Santa Fe Railway
(Coast Lines)

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied.

DATE: April 15, 1996

STATEMENT OF CLAIM:

Request in behalf of Los Angeles Division Conductor R. S. Wilcox and Brakeman R. G. Bowler for payment of all time lost due to the ten days' suspension and that the 20 days' deferred suspension be removed from their records as a result of the investigation held on November 20, 1991.

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.

Claimants were two members of a train crew charged with a blue flag violation. It is undisputed that the 1-368-19 train moved out of Barstow yard track 1507 at approximately 5:30 a.m. on October 22, 1991 while a blue flag, with a blue light signal attached, was inserted in the flag holder of the lead locomotive of their consist. The blue signals could not be seen, in the darkness, from the engineer's operating chair without opening the window and leaning his head out approximately four inches. Neither the Claimants nor the engineer were specifically informed the blue signals were being placed on their locomotive. It is also clear that neither the Claimants nor the engineer took any action to

check the area of the blue flag holder for the presence of the blue signals before departing track 1507 even though it was known that a carman was affixing an ETD to the train and performing an air test.

The carman attached the blue signals before starting his work. He testified that Brakeman Bowler was walking by him on the same side of the locomotive at the time he placed the signal and could not have missed seeing it. Bowler denied this. The carman also believed the engineer had to see him walking across the adjacent track toward the locomotive about to place the signals. The engineer denied this.

The carman admitted he failed to completely comply with all of the requirements of Rule 26, the blue signal rule, in securing the train before he began his work. For his omissions, he received the same disciplinary penalty as the Claimants. The engineer also received the same discipline.

The Organization makes two contentions: Carrier did not provide Claimants a fair and impartial hearing and Carrier did not prove Claimants guilty of the rule violation.

This Board's role in reviewing the investigative record and Carrier's assessment of discipline is a limited one. We do not sit to make our own determination of propriety or to substitute our judgment for that of the Carrier as though the proper disciplinary action was ours to decide anew. Rather, our role is to ensure that Carrier's actions were supported by substantial evidence and fall within the range of discipline appropriate for the misconduct involved.

On the record before us, we do not find that Claimants were denied a fair and impartial hearing. And although much of the evidence in the record of investigation is conflicting, it does contain substantial evidence in support of Carrier's action. It was proper, therefore, for the Carrier's investigating officer to resolve the evidentiary conflicts against the Claimants.

Moreover, it was not unreasonable for Carrier to hold the

Claimants to a high degree of safety and require that they exercise at least a minimal degree of vigilance under the circumstances. It is important to note again that neither Claimant took any action whatsoever to check for a blue signal at any time. Nor did they even ask the engineer to look out his window for a blue signal.

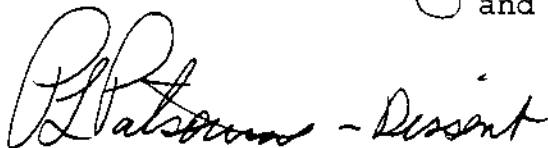
Given the nature of the evidence supporting Carrier's disciplinary action, we do not find the penalties imposed to be unreasonable.

AWARD:


The Claim is denied.



Gerald E. Wallin, Chairman
and Neutral Member



P. L. Patsouras,
Organization Member



David S. Hubbs,
Carrier Member

Dated this 15th day of April, 1996 in St. Paul, Minnesota.