

PUBLIC LAW BOARD NO. 4901

AWARD NO. 223

CASE NO. 223

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 Conductor J. H. Apperson for removal of the thirty-day Record Suspension and the assigned probation period of one (1) year and exoneration of the alleged violations of Rules 1.6 of the General Code of Operating Rules in effect April 2, 2000 and Rules S-13.5, S-13.1.1, S-13.2.4(a-2) and S-13.2.4(a-5) of the TY&E Safety Supplement No. 1 in effect April 1, 1998 from the Claimant’s personal record and with pay for all time lost for attending the Formal Investigation conducted on November 27, 2001.”

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 disciplined for several rule violations in connection with a coupling operation he undertook on November 7, 2001. He had more than twenty-eight years of service at the time. His prior work record contained no recent discipline worthy of note.

Our review of the record reveals no procedural shortcomings of significance. The record does not show that the brakeman on the crew had any material information to offer. The hearing officer did not interrupt the Organization’s representative and ask him to move on until the representative had become unduly repetitive by pursuing points that had already been asked and answered several times without variance; it did not constitute pre-judgment for the hearing officer to have done so.

The Carrier’s determination of Claimant’s guilt was supported by substantial evidence in the record provided by two eye-witnesses to his conduct. They saw him dismount from moving equipment. They saw him go between equipment with less than fifty feet of separation. They also saw him try to kick the locomotive drawbar into alignment several times. Such conduct violates the rules charged, constitutes carelessness and negligence, and also disregards the directive, in Superintendent’s Notice No. 20, that such safety shortcuts are unacceptable.

In light of the unsafe nature of Claimant’s conduct, we do not find the disciplinary penalty imposed by the Carrier to be unreasonable.

AWARD:

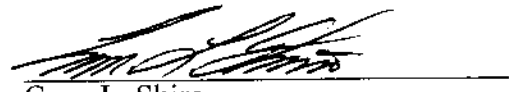
The Claim is denied.



Gerald E. Wallin, Chairman
and Neutral Member



P. L. Patsouras, R. L. MARCFAN
Organization Member



Gene L. Shire,
Carrier Member

DATE: 3-4-04