

PUBLIC LAW BOARD NO. 4901

AWARD NO. 190

CASE NO. 190

**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 Arizona Division Engine Foreman T. J. Flores for removal alleged violations of Rules 1.1, 1.1.1, 1.6, 2.1.3, 6.5, 7.1, and 7.2 of the General Code of Operating Rules 2000, Fourth Edition effective April 2, 2000 and Rule S-1.1 of the TY&E Safety Supplement No. 1, in effect April 1, 1998 including revisions up to Sunday, October 10, 1999, from the Claimant’s personal record and for his reinstatement to the service of the Burlington Northern Santa Fe Railway Company, Coast Lines, with seniority and all other rights unimpaired and with pay for all time lost including the payment of Health and Welfare Benefits beginning on May 10, 2000, and continuing until returned to service as a result of the Formal Investigation conducted on June 20, 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 violating eight Carrier rules in connection with his switching assignment at Gallup Yard on May 9, 2000. At the time of the incident, Claimant had nearly twenty-eight years of service with the Carrier. His prior work record contained two previous dismissals as well as seven additional disciplinary events in the immediately preceding three and one-half years. Five of the seven involved non-compliance with safety rules. The other two arose from the mishandling of switches and rolling stock. The event in question was Claimant’s fifth infraction in less than two years. At the time, Claimant was in a probationary period with respect to his continued employment due to his previous rule violations.

Our review of the record does not reveal any procedural shortcomings of significance. Although the transcript contained several instances of partially inaudible answers, its overall context is sufficient to establish the essential facts with reliability.

According to the evidence, Claimant left his helper and engineer alone to set ten cars out on two yard tracks while he went into a nearby shanty to do computer work. While Claimant was in the shanty, a Carrier official observed his crew blind shoving the cuts of seven and three cars. The

incident took place close to the end of the tour of duty.

The helper testified that Claimant knew the cars would be shoved blind. The helper also noticed that his actions were observed by the Carrier official. According to his testimony, when he informed Claimant of the official's presence, Claimant was shocked and said words to the effect that he hoped that the blind shoving had not been seen.

According to the testimony of two Carrier officials, Claimant acknowledged they should not have been making blind shoves. In addition, they testified that Claimant accepted full responsibility for the infraction. Claimant did not recall making this admission.

Claimant also admitted that he had not conducted a job briefing with respect to the two shoves before he left his crew alone.

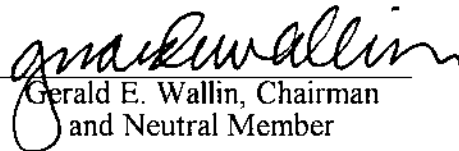
Under the circumstances, we find that substantial evidence supports the Carrier's determination that Claimant's actions, or inactions, constituted violations of the rules charged. The context of the investigation shows that blind shoving was known to be a serious rule violation.


The record does not substantiate that the engineer knew or had reason to know that the helper was directing blind shoves. The helper waived investigation; he accepted a Level S 30-day suspension and two year probationary period for his involvement. The helper's past discipline record was not shown to be as extensive as that of Claimant.


Given the foregoing considerations, we find Carrier's disciplinary action is not unreasonable or disparate in light of all of the relevant facts. Accordingly, we have no proper basis for disturbing it.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


P. L. Patsouras,
Organization Member


Gene L. Shire,
Carrier Member

DATED: 10-7-03