

PUBLIC LAW BOARD NO. 4901

AWARD NO. 84
CASE NO. 84

PARTIES TO
THE DISPUTE:

United Transportation Union

vs.

Burlington Northern Santa Fe Railway Company
(Coast Lines)

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained.

DATE: September 16, 2000

STATEMENT OF CLAIM:

"Request for the removal of the Level 3 suspension of thirty (30) days to commence on April 1, 1995, to be reinstated to service on May 1, 1995, and his alleged violation of Rule 6.31, General Code of Operating Rules, Third Edition, effective April 10, 1994, from the personal record of Albuquerque Division Conductor A. T. Williams and for the removal of the Level 3 suspension of thirty (30) days to commence on April 1, 1995 to be reinstated on May 1, 1995, for his alleged violation of Rule 1.47, General Code of Operating Rules, Third Edition, effective April 10, 1994, from the personal record of Albuquerque Division Brakeman S. B. Coffey and that they be reinstated to the service of The Atchison, Topeka and 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 or Welfare Benefits beginning on April 1, 1995, and continuing until returned to service, as a result of the Formal Investigation held on March 10, 1995."

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' crew was involved in a two-car derailment at El Mirage, Arizona on February 8, 1995. They were instructed to clear the main line for a passing train. The derailment apparently occurred while trying to split up their train and shove it clear. The ensuing

investigation of speed tapes and other data failed to reveal a proximate cause of the derailment and the crew was not held responsible for it. According to the Carrier, however, the speed tapes showed that the crew had allowed their train to occasionally operate at excessive speed while running from Ashfork, Arizona to El Mirage. All agreed this stretch of track was one of the more difficult areas in which to control the speed of a train.

Our review of the record reveals serious evidentiary shortcomings. First, Rule 6.31 explicitly places joint responsibility for speed control upon the conductor and engineer -- the brakeman is not tasked with this direct responsibility. The rule reads, in pertinent part, as follows:

Maximum Authorized Speed. Conductors and engineers are jointly responsible for knowing and not exceeding the maximum authorized speed for their train.

* * *

The crew was also charged with violating Rule 1.47, paragraph D. It is a broad, general safety rule that reads as follows:

D. Other Crew Members Responsibilities:

1. To insure the train is operated safely and rules are observed. Other crew members must assume as much responsibilities as possible to prevent accidents or rule violations.

Oddly enough, the brakeman was found in violation of Rule 1.47 D but the conductor was not. The conductor was only found to have violated Rule 6.31. If the brakeman was in violation of Rule 1.47 D, one would certainly expect the conductor to have violated it as well. The record provides no rational explanation for these Carrier findings. In addition, the nature of rules 6.31 and 1.47 D imposes a much greater degree of responsibility upon the conductor for speed control. Yet both crewmembers were assessed the same disciplinary penalty. These factors, by themselves, demonstrate an unacceptable degree of arbitrariness and caprice in Carrier's disciplinary decision.

Second, even if one assumes that the speedometer in the locomotive actually did show occasional excessive speed conditions, there is no evidence whatsoever that the brakeman knew it. The transcript, at page 226, shows that the brakeman was seated behind the conductor. But he was facing to the rear to observe the end of the train.

Third, and finally, the Carrier's case against the Claimants rests entirely upon the validity

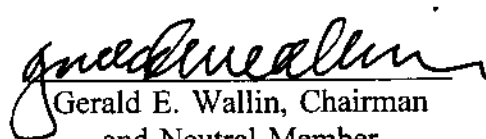
of the speed tape printout. The record is clear, however, that the recording device needs periodic maintenance and calibration. The record contains no evidence that this had been accomplished in the relevant timeframe. The Carrier official who interpreted the printout had no knowledge of the maintenance history. Consequently, the speed tapes lack a sufficient factual foundation upon which to base their validity. The validity of the printout is also undermined by another factor. The Carrier official admitted, beginning at page 117, that the printout contained markings that should not have been there. He had no explanation for the presence of the markings.


Given the lack of a sufficient evidentiary foundation for the speed tape printout, the data cannot rise to the level necessary to constitute substantial evidence in support of the disciplinary action. The Board, therefore, has no choice but to find the discipline not adequately supported by the record.


Carrier is directed to comply with this award within thirty days.

AWARD:

The Claim is sustained.


Gerald E. Wallin, Chairman
and Neutral Member


P. L. Patsouras,
Organization Member


Gene L. Shire,
Carrier Member