

PUBLIC LAW BOARD NO. 4901

AWARD NO. 79
CASE NO. 79

PARTIES TO
THE DISPUTE: United Transportation Union

vs.

Burlington Northern Santa Fe Railway Company
(Coast Lines)

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied

DATE: September 8, 2000

STATEMENT OF CLAIM:

"Request in behalf of Los Angeles Division Conductor DiDonato for the removal of the Level 4, 90 day actual suspension from his personal record commencing at 12:01 A.M. on November 28, 1994, and expiring at 12:01 A.M. on February 25, 1995, and his alleged infraction of Rule(s) 9.5 of the General Code of Operating Rules, effective April 10, 1994, and Rule(s) 9.62 of the System Timetable effective April 10, 1994, from the Claimant's personal record and that he 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 and continuing until returned to service as a result of the Investigation held on October 12, 1994."

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.

At approximately 7:20 a.m. on September 15, 1994, the train in Claimant's charge failed to stop short of a stop signal while eastbound on the north main track at Lugo, California. The train ran through and damaged a power switch at that location.

Substantial evidence in the record supports Carrier's belief that the engineer and engineer trainee operating the lead locomotive actually saw a dim yellow signal aspect as they were looking partially into the early morning sunrise on the day in question. In their initial interviews

with Carrier officials, both the engineer and trainee noted the signal to have a white-ish or pale appearance. Carrier rules require that such a white observation be taken as the most restrictive aspect; in this case, it would have meant stop and proceed. The indication was dim because the signal lamp had vibrated partially out of its normal position. As a result, the engineer and trainee misread the signal as green or clear to proceed and increased the speed of the train rather than proceed prepared to stop short of the Lugo signal.

At the time the train was passing the dim approach signal, Claimant had preoccupied himself with other conductor duties. Contrary to rules requiring him to be alert for signals and to call out the observed aspect to the other crew members, Claimant did not do so. He did not observe the approach signal nor did he hear the call-out of the engineer and trainee. Having not seen the signal himself, Claimant took no action to proceed prepared to stop. Rather, he relied on the mistaken observations of the engineer and trainee and allowed the train to increase speed. When the train came upon the stop signal at Lugo, which surprised the crew, the combination of speed and distance prevented the train from stopping short of the signal.


Extensive testing of the signal system the following day disclosed no malfunction of the mechanisms. Though all agreed the signal was dim, due to the slightly out of place signal lamp, they also agreed the aspect was yellow.


Given the state of the evidentiary record and the nature of the infractions, we have no proper basis for disturbing Carrier's disciplinary action.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


P. L. Patsouras,
Organization Member


Gene L. Shire,
Carrier Member