

**PUBLIC LAW BOARD NO. 4901**

AWARD NO. 184

CASE NO. 184

**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 Los Angeles Division Conductor J. A. Roy for the removal of the Level S Suspension of thirty (30) days and an assigned probation period of one (1) year (which commenced on September 21, 1999, to be reinstated to service at 12:01 a.m., on October 21, 1999), and exoneration of the alleged violation of Rules 9.5, and S1.2.3 of the General Code of Operating Rules, April 1, 1998 edition, from the Claimant’s personal record, and pay for all time lost beginning September 16, 1999 and continuing until returned to service as a result of the Formal Investigation conducted on September 16, 1999.”

**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 because his train passed a red stop signal aspect on August 5, 1999 at just before 1:00 p.m. on the Cajon Subdivision. The engineer was able to stop the train in time to avoid a collision with another train stopped ahead of it. At the time of the incident, Claimant had approximately eighteen months of service with the Carrier. His record reflected no prior discipline as of that date.

Our review of the record reveals no procedural deficiencies of significance. The fact that the engineer was immediately removed from service pending the investigation does not constitute prejudgment of his guilt or that of Claimant. In addition, it was not error for the hearing officer to exclude the testimony of other employees who were involved in a similar situation approximately six months earlier but who were not present for the incident under investigation. Finally, despite the presence of conflict on this point, probative evidence in the record shows that Carrier’s superintendent did mail his denial response within the time limitation prescribed by the Agreement. Thus, no time limit violation was sufficiently proven.

On the merits, the transcript establishes that the signal in question was red at all times relevant but gave a yellowish appearance when viewed from more than 1,800 to 2,000 feet away. This was due to reflections off the surrounding light terrain and glare from the mid-day sun. However, the

record is equally clear that the red, or stop, aspect became more apparent between 1,800 and 600 feet. At 600 feet or less, the red aspect was plainly visible. Moreover, substantial evidence in the record establishes that the signal was functioning properly at the time of the incident.


The record also contains the testimony of another engineer who encountered the same signal on the same day. Because he was not sure about the odd color initially seen, although his other crew members called it as yellow, he exercised caution, as he should have, and crept up on the signal at restricted speed until he could confirm its aspect; he saw that it was indeed red and stopped his train.

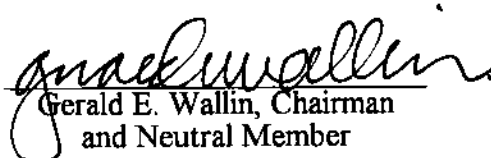
The record also confirms that the Claimant and his engineer knew they were following a slower train on the day in question. It was this train that they found stopped in front of them after they had passed the red signal.


Under the circumstances, we find the discipline in this case is supported by substantial evidence in the record. Thus, we find there is no proper basis for disturbing the Carrier's handling of this matter.

AWARD:

The Claim is denied.

  
\_\_\_\_\_  
P. L. Patsouras,  
Organization Member

  
\_\_\_\_\_  
Gerald E. Wallin, Chairman  
and Neutral Member

  
\_\_\_\_\_  
Gene L. Shire,  
Carrier Member

DATE: Oct 17, 2002