

PUBLIC LAW BOARD NO. 4901

AWARD NO. 215

CASE NO. 215

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 Southern California Division Conductor J. P. Dickson for 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, from September 9, 2001 until returned to service.”

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 as a result of his conduct on September 9, 2001. He was conductor and train crew supervisor when his train failed to stop short of the red block signal at Hodge, California at approximately 7:50 a.m. At the time of his dismissal, Claimant had not quite seven years of service. His work record prior to September 9th showed that he was in a probationary period imposed a year earlier in connection with a Level S disciplinary suspension of 30 days.

The Organization raised two procedural objections to the discipline. It contended the Carrier violated the doctrine of double jeopardy when it held two investigations for the same event. It also contended the Carrier failed to timely deny the Organization's appeal thus entitling the Claimant to a default award in his favor.

As we noted in Award 214 of this Board, the Carrier's action does not offend the concept of double jeopardy. Although the Carrier held a separate investigations pertaining to Claimant's conduct on September 9, 2001, the other investigation focused on different facts and a different rule. It explored whether Claimant properly completed a signal awareness form prior to the red signal violation.

For the reasons explained in Award 214, we also find that the Carrier satisfactorily proved that it complied with the time limitation for denying the Organization's appeal.

Turning to the merits, our review of the record reveals substantial evidence in support of the Carrier's culpability determination. Claimant's train was heavy. It contained 88 loaded coal cars

and weighed between 11,000 and 12,000 tons. Because of the weight, the locomotive power had to be distributed throughout the train. Thus Claimant should have been aware that it would take time and distance to stop it from normal operating speeds.

The record shows the Claimant did not insist that his crew members be attentive and call out signals as they were approached and passed, which is what Carrier rules required. Claimant testified he knew the approach signal to Hodge was yellow. Nonetheless, he did not recall reporting that aspect to the engineer or brakeman. Nor did he recall the yellow aspect being called out by his other crew members. Accordingly, Claimant did not ensure that the members of his crew proceeded to the control signal at Hodge with the same understanding of the situation.

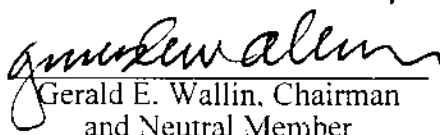
As it turned out, both the engineer and brakeman missed the yellow approach signal. The engineer thought he was in a clear block and proceeded at 40-45 miles per hour.

Despite knowing his train had the yellow approach signal, Claimant took no action to ensure his train reduced speed in preparation for stopping short of a red signal at Hodge. Instead, he let his train cruise onward. It was not until the engineer mis-called the red signal at Hodge as being yellow that the brakeman looked up from what he was doing and declared, "Looks like it's red to me." Only then did Claimant initiate emergency stopping action. The speed and weight of the train caused it to pass the red signal by some 300 feet before coming to rest.


Given the nature of Claimant's misconduct coupled with the fact that he was already in a probationary period for a prior serious safety rule violation, we do not find the Carrier's disciplinary penalty to be harsh, arbitrary, or excessive.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


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


Gene L. Shire,
Carrier Member

DATE: 3-4-04