

PUBLIC LAW BOARD NO. 4901

AWARD NO. 75  
CASE NO. 75

PARTIES TO  
THE DISPUTE: United Transportation Union (CT&Y)

vs.

The Burlington Northern and Santa Fe Railway Company  
(Coast Lines)

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied.

DATE: March 11, 1998

STATEMENT OF CLAIM:

Request of Los Angeles Division Conductor P. C. Ernst for the removal of the Level 5, 365 Day Actual suspension commencing August 5, 1994 ending on August 4, 1995, from his personal record and his reinstatement to service of The Atchison, Topeka and Santa Fe Railway Company, Coast Lines, with seniority and all other rights unimpaired and pay for all time lost including the payment of Health and Welfare Benefits beginning on August 5, 1994, and continuing until returned to service as a result of the investigation held on August 22, 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.

Claimant was disciplined after the train, on which he served as conductor, failed to stop short of a red signal and rear-ended another train on the track ahead of them. According to the record, Claimant's train was operating under a yellow signal, prior to encountering the red block, in an area he had traversed many times before and where it was known that trains could accelerate unless speed was closely monitored. According to pulse tape data stipulated into evidence during the investigation, Claimant's train exceeded the maximum allowed restricted speed in the moments prior to encountering the red signal. From that point on, even emergency

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braking could not prevent passing the signal and colliding with the other train.


At the conclusion of the investigation, the Organization representative stated on the record that discipline was warranted and recommended a six-month suspension as well as, among other things, a further six-month restriction to yard service. Carrier instead imposed the one-year suspension pursuant to its disciplinary policy in effect at the time of the decision.

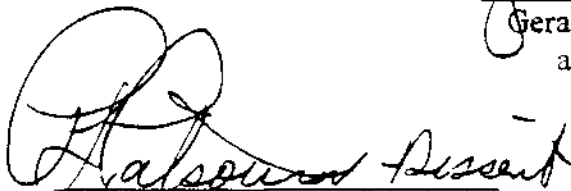
The Organization raised a number of procedural contentions after the Carrier imposed discipline. They have all been carefully reviewed and are found to lack merit. For examples, the record does not substantiate that Carrier failed to timely notify Claimant of the discipline. The video tape in controversy, in which a Carrier officer discussed the facts and safety aspects of the collision, did not, in our judgment, constitute prejudgment. This was especially so in view of the fact that the Organization itself recognized that substantial discipline was warranted by the circumstances. The pulse tape data in controversy was admitted by stipulation. Moreover, it was supported by similar data pertaining to another one of the locomotives in the consist as well as the testimony of the crew, including Claimant.


In addition to the foregoing, our consideration of the record disclosed no other proper basis for concluding that Claimant was not provided a fair and impartial investigation.

Given the seriousness of the circumstances, as demonstrated by the record, we do not find that the discipline imposed was harsh, arbitrary or excessive.

AWARD: The Claim is denied.

  
Gerald E. Wallin, Chairman  
and Neutral Member

  
P. L. Patsouras,  
Organization Member

  
Gene L. Shire,  
Carrier Member