

PUBLIC LAW BOARD NO. 4901

AWARD NO. 225

CASE NO. 225

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 of Southwest Division Yardman R. F. Colbath for the removal of the Level S Record Suspension of Thirty (30) days, and exoneration of the alleged violation of Rule 1.1 of the General Code of Operating rules, Fourth Edition, effective April 2, 2000 and rule S-1.2.5 and S-13.1.5 of the BNSF T.Y. & Safety Supplement No. 1, in effect April 1, 1998, as supplemented or amended from the Claimant’s personal record and with pay for all time lost for attending the Formal Investigation conducted on February 19, 2002.”

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 received a record suspension for the alleged safety violation along with a probationary period of one year. As such, the discipline consists of a written entry only without any loss of pay or work time. At the time of the discipline, Claimant had more than twenty years of service. According to the Carrier’s testimony, he was a good employee.


Our review of the record does not reveal any procedural irregularities of significance. Although the conducting officer read into the record all of the sub-sections of the rules cited in the notice of investigation, nothing in Rule 24 precluded him from doing so. Moreover, while Claimant was relieved of duty for the remainder of his work shift on the day of his alleged misconduct, it was with full pay. As such, it did not constitute impermissible discipline in violation of the Agreement.

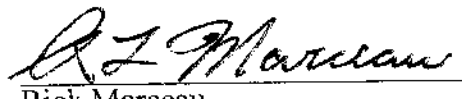
On the merits, the record establishes that Claimant rode within the end framework of cement car SDWX-9864 on the day in question. He was observed by several Carrier officials who were conducting a work practice observation type of inspection. Claimant also acknowledged having done so. While Claimant provided plausible explanations for having chosen that particular location to ride rather than using the side ladder and hand-holds, Carrier’s Safety Rule S-13.1.5 precluded him from riding where he did. Thus, we must find the record to contain substantial evidence in support of the discipline.

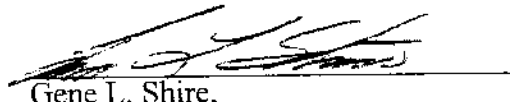
Given the nature of the safety rule violation involved, we do not find the relatively light discipline imposed to be unreasonable.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


Rick Marceau,
Organization Member


Gene L. Shire,
Carrier Member

DATE: 05/11/2005