

PUBLIC LAW BOARD NO. 4901

AWARD NO. 227

CASE NO. 227

**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 Northern California Division Trainman W. R. Cornelison for the removal of the Level S Record Suspension of Thirty (30) days and one (1) year probation, and exoneration of the alleged violation of Rule 1.2.5 and 1.6 Items 1 and 2 of the General Code of Operating rules, Fourth Edition, effective April 2, 2000 and Rule S-13.7.1 and S-13.7.2 of the BNSF T.Y.&E Safety Supplement No. 1, in effect October 10, 1999, from Claimant’s personal record and with pay for attending the Formal Investigation conducted on May 28, 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.

As noted in the above Statement of Claim, the discipline assessed was a record suspension for safety rule violations along with a probationary period of one year. As such, the discipline consists only of a written entry in Claimant’s work record without any loss of pay or work time. At the time of the discipline, Claimant had just over five years of service with no prior related discipline of significance.

The record does not establish the existence of any significant procedural irregularities in the handling of this dispute. The typographical errors regarding the rules cited in the notice of investigation were benign and did not disadvantage Claimant or his representative in their preparation for the investigation. Moreover, a recess was offered to review the correct text of the rules and their numbers and was declined. Although there was an allegation of missing witnesses, the transcript does not establish any necessity for their presence. It is undisputed that there were no witnesses present to observe Claimant injure himself when he attempted to throw Switch 405 on the evening of May 1, 2002. Thus, the record suggests the alleged missing witnesses would have no pertinent information to provide. In addition, however, no explanation of what necessary information they had was provided for the record. Without such an explanation, we are in no proper position to determine that their presence was required. Finally, it is not necessary to enter personal

notes of a witness into the record. Generally speaking, such notes do not become part of the record unless the witness has no recollection of his own even after reviewing his notes and must rely on the notes to establish the facts. Such was not the case in this investigation.

Turning to the merits, we find the basic facts to be essentially undisputed. Claimant injured himself on the evening of May 1, 2002 when attempting to throw the switch to Track 405. It bound up approximately one-quarter of the way through the throw and caused something to "pop" in Claimant's shoulder. Nonetheless, Claimant did nothing to report the condition of the switch at the time. The condition of the switch was not revealed until two days later when Claimant filled out an injury report. His report checked the "Yes" box in response to this question: "Was there anything wrong with the equipment, work procedures, or work area which led to this accident/injury?" In the related description area of the form, Claimant wrote, "Something caused the switch to bind up." Claimant also admitted in his testimony that the switch did not operate properly and that he did not report the condition immediately. Carrier's Safety Rule S-13.7.1 B required him to do so immediately as well as tag the switch to take it out of service to prevent possible injuries to others. The record also establishes that a later inspection of the switch found the physical effort required to throw the switch exceeded the 135 foot-pounds upper limit allowed.

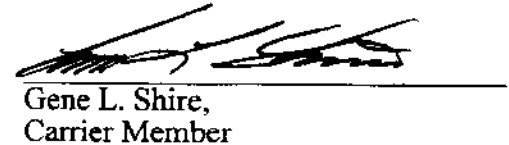
Given the foregoing, we find the record to contain substantial evidence in support of the Carrier's decision to impose discipline. Under the circumstances, the penalty imposed is not found to be excessive or otherwise unreasonable.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member

 (dissenting)
Rick Marceau,
Organization Member


Gene L. Shire,
Carrier Member

DATE: 08/11/2005