

**PUBLIC LAW BOARD NO. 4901**

AWARD NO. 180

CASE NO. 180

PARTIES TO  
THE DISPUTE: United Transportation Union

vs.

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

ARBITRATOR: Gerald E. Wallin

DECISIONS: Claim sustained in accordance with the Findings

STATEMENT OF CLAIM:

“Request in behalf of Fresno Local Conductor M. Z. Dillard and Brakeman B. R. Hoschouer for the removal of the Level S Suspension of twenty (20) days, the three (3) year probation period the Claimants received and exoneration of the alleged violation of Rules 1.1, 1.1.1, 1.1.2, 1.6(items 1 and 2), 2.1, 2.2, 2.4, 2.5, 2.8, 6.5, and 7.1 of the General Code of Operating Rules, Third Edition, effective April 10, 1994, and Rules S-1.4.5 and S-13.5 of the Safety Rules and General responsibilities for all Employees effective March 1, 1997, as revised April 14, 1997, and from the Claimants’ personal records and the Claimants be allowed all time lost as a result of the Formal Investigation conducted on March 23, 1998.”

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.

Claimants were observed performing their duties on March 3, 1998 at approximately 10:30 p.m. by a 3-person management audit team. During the debriefing discussion that followed the performance audit, the Claimants allegedly admitted certain rule violations to the audit team leader. Following a formal investigation held March 23, 1998, the Claimants received discipline for several rules violations relating to disembarking moving equipment, improper radio procedures, and protection of shoves.

Our review of the record fails to reveal any procedural shortcomings of significance in the conduct of the hearing and the handling of the matter on the property. The Carrier produced the two operating members of the audit team for testimony at the hearing. The Organization failed to establish why or in what manner the testimony of the third member, whose expertise was mechanical and not operating, was necessary. We also find the notice of charges to have been sufficiently specific to inform the Claimants of the scope of the investigation.

On the merits, we find the record to contain substantial evidence in support of the charge of getting off of moving equipment and the failure to use “over” and “out” as required by proper radio

procedures.

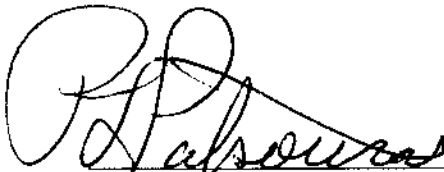
However, the record does not contain sufficient specific evidence to support violations of Rules 2.1, 2.2, and 2.8, which relate to other radio procedures. In this regard, the Carrier's concerns about Rule 2.8 appear to relate to the engineer's failure to repeat instructions and not any deficiencies by Claimants. Similarly, the evidence does not explicitly support a violation of Rules 6.5 or 7.1. To the contrary, transcript page 31, line 25 through page 32, line 2 and similar references elsewhere reflect that the shove was protected. Claimants' work records must be revised accordingly.

The misconduct proven, however, did violate safety rules and degraded the safety of Claimants' work performance. We do not, therefore, find the Level S discipline imposed to be inappropriate under the circumstances. Thus, the 20-day suspensions and probationary periods should stand as imposed.


The Claim is sustained only to the extent that Claimants' records require revisions consistent with these Findings.

**AWARD:**

The Claim is sustained in accordance with the Findings.

  
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P. L. Patsouras,  
Organization Member

  
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Gerald E. Wallin, Chairman  
and Neutral Member

  
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Gene L. Shire,  
Carrier Member

DATE: OCT. 17, 2002