

**PUBLIC LAW BOARD NO. 4901**

AWARD NO. 208  
CASE NO. 208

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 D. S. Everst that the dismissal from service and the alleged rule violations of Rule Number S-13.1.5, of the Train Yard and Enginemen’s Safety Supplement Number 1 effective 1201. April 1, 1998, (including revisions up to Sunday, October 10, 1998), and that part of the September 19, 2001, letter stating Claimant’s second (2) violation of a Seven Critical Decision in the past year, be removed from Claimant’s personnel record and that the Claimant be reinstated to the service of the BNSF Railway Company with seniority and all other rights unimpaired and with pay for all time lost including the payment of Health and Welfare Benefits beginning September 19, 2001 and continuing until returned to service as the result of the Formal Investigation which was held August 30, 2001.”

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 observed riding on the end ladder of a moving car as it was being “kicked” into the 10-track at Pico Rivera Yard on July 17, 2001. Claimant was aware that such conduct violated Carrier rules, specifically Rule S-13.1.5.

Claimant was dismissed from all service following an investigation. At the time of his dismissal, Claimant had over twenty-three years of service. His work record showed a prior Level S disciplinary action for alighting from moving equipment; he waived investigation and accepted a suspension and 1-year probationary period. He was within that probationary period when the instant dispute arose.

No procedural objections were raised at the investigation and our review of the transcript does not reveal any such irregularities. Moreover, Claimant admitted his conduct.


It can be seen from the foregoing that the Carrier’s determination of guilt is supported by substantial evidence in the record. This evidence also supports the Carrier’s rejection of the Claimant’s contention that there were mitigating circumstances that caused him to move onto the end ladder while the car was moving. No excessive “kick” speed was observed and the 10-track was a

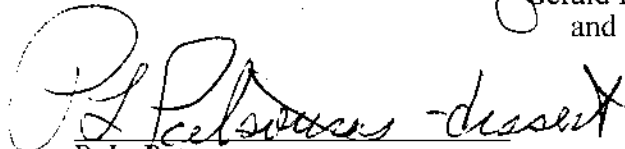
clear, bowl track where gravity would have prevented the car from damaging other rolling stock.

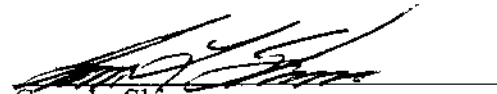
Given the serious personal safety risk posed by Claimant's conduct and the fact that he was in a probationary period flowing from a recent previous and serious safety violation, we cannot find the Carrier's discipline to have been unreasonable, harsh, or excessive.

AWARD:

The Claim is denied.

  
Gerald E. Wallin, Chairman  
and Neutral Member

  
P. L. Patsouras,  
Organization Member

  
Gene L. Shire,  
Carrier Member

DATE: 12-29-03