

**PUBLIC LAW BOARD NO. 4901**

AWARD NO. 214

CASE NO. 214

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 J. P. Dickson for reinstatement to the service of the Burlington Northern Santa Fe Railway Company, Coast Lines, with seniority and all other rights unimpaired and with pay for all time lost including the payment of Health and Welfare Benefits beginning on September 9, 2001 when Conductor Dickson was withheld from service pending investigation and until returned to service as a result of the two Formal Investigations held on October 17, 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.

The instant dispute confronts this Board with an unusual procedural history. On September 9, 2001, Claimant was conductor on a train that failed to stop short of a red signal at Hodge, California. After relieving the crew from duty and driving them back by van to San Bernardino, Carrier officials suspected that Claimant had also failed to complete a signal awareness form as required by System Special Instruction 43. The Carrier held separate investigations on the same day for the signal awareness form violation and the red signal violation.<sup>1</sup>

Sometime prior to the investigation, the record herein shows there was some sort of conference about the alleged signal awareness form violation which led the Carrier to offer Claimant the ability to waive investigation and accept discipline consisting of a 30-day Level S suspension with a 3-year probationary period. Claimant declined the offer.

By letter dated October 29, 2001, Claimant was found guilty of the signal awareness form violation. Carrier's decision letter imposed the same discipline that he was offered in the waiver letter. It appears that the same wordprocessor file was used from the waiver letter because of the

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<sup>1</sup> The red signal violation is the subject of Case 215 before this Board.

similarity of format and text. It is also noted that apparently poor proofreading allowed the final paragraph of the waiver letter to be erroneously included in the decision letter.

The record shows that Carrier announced its decision for the red signal violation by separate letter dated October 30, 2001.

Despite the separate handling of the two violations up to the point of appeal, the Organization apparently combined the two matters by submitting only one appeal letter dated November 18, 2001.

According to the Carrier, it replied to the Organization some 16 days later by letter erroneously dated December 3, 2002. The Organization, however, maintains that the Carrier's letter was never received. By letter dated February 10, 2002, therefore, the Organization declared the Carrier to be in default under the time limitation of the Agreement. On March 5, 2002, Carrier responded and provided a copy of the letter it asserts was sent December 3, 2001.

The Organization raised the time limit and other procedural objections in addition to challenging the propriety of the discipline on its merits. The Organization contends the discipline was harsh, arbitrary and excessive.

The record herein compels us to reject the Organization's procedural objections for lack of merit. Although they occurred on the same day, the factual circumstances underlying the alleged signal awareness form violation and the red signal violation are different types of misconduct and they involve different rules. Thus they are not the same incident and the Organization should not have attempted to combine them. Therefore, it did not constitute double jeopardy for the Carrier to hold separate investigations.

The fact that Claimant received the same discipline when his guilt was determined after investigation as he would have received upon waiver does not show impermissible pre-judgment or the lack of a fair and impartial investigation. The same misconduct, whether admitted by waiver or determined after investigation, normally should produce the same penalty. It is the misconduct that leads to the disciplinary penalty and not the means by which the misconduct is determined that controls the penalty.

On the time limit issue, the parties' practice for the exchange of mail correspondence has been informal. They have not required proof of mailing and/or proof of receipts. Therefore, on this record, the supplied copy of Carrier's December 3, 2001 denial letter is sufficient to show compliance with applicable time limitations. If the parties wish to abandon this practice and establish a more formal protocol for exchange of mail, they need to put each other on formal notice of such desire before raising future objections.


On the merits, our review of the record shows it to contain substantial evidence in support of Carrier's guilt determination. The record shows that Claimant did not attempt to obtain the proper territory-specific signal awareness form at Barstow before leaving on his trip. He admitted he did not record the required information on the form as each signal was passed. He also admitted he knew he was required to record the data contemporaneously with the passage of each signal. Finally, he admitted he entered the information for all six signals depicted on the form from his memory after his train failed to stop for the red signal at Hodge.

On the question of the disciplinary penalty, it is noted that Claimant was already in a probationary period for a previous Level S violation at the time of the instant infraction. Given his


length of service of less than seven years at the time, we do not find the penalty to be harsh, arbitrary or excessive.

AWARD:

The Claim is denied.

  
Gerald E. Wallin, Chairman  
and Neutral Member

  
~~P. L. Patsouras~~, R. L. MARCSEAU  
Organization Member

  
Gene L. Shire,  
Carrier Member

DATE: 3-4-03