

In the Matter of the Arbitration Between:

BNSF RAILWAY COMPANY

NMB Case No. 107

Claim of D. J. Gonzales

and

Dismissal: Derailment

UNITED TRANSPORTATION UNION (COAST LINES)

STATEMENT OF CLAIM: Request on behalf of Switchman D. J. Gonzales asking for reinstatement, payment for all time lost and restoration of seniority and all fringe benefits.

FINDINGS OF THE BOARD: The Board finds that the Carrier and Organization are, respectively, Carrier and Organization, and Claimant an employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted and has jurisdiction over the parties, claim and subject matter herein, and that the parties were given due notice of the hearing which was held on August 19, 2010 in Washington, D.C. Claimant was present at the hearing. The Board makes the following additional findings:

The Carrier and Organization are Parties to a collective bargaining agreement (the "Agreement") which has been in effect at all times relevant to this dispute, covering the Carrier's employees in the Trainman and Yardman crafts including Claimant. The Board makes the following additional findings.

Claimant was the Yard Foreman on a job at Hobart Yard in Los Angeles on a job which is the subject of Case No. 106 before this Board. The language of that Opinion and Award is incorporated herein and made a part hereof.

Claimant reported the derailment, which occurred on his crew's last move of the day. He was advised that his crew would be relieved by the next trick's crew. He asserted that he was upset at the derailment and understood that he was being relieved from service and sent home. Claimant then instructed a Carrier van driver to take him back to the building where crew lockers are located and left work without waiting for Carrier officers to arrive and without being interviewed or giving any statement. He did not tie up before he left. The Carrier did not have the opportunity to interview him or subject him to drug testing and did not obtain a statement from him with respect to the incident.

The Carrier notified Claimant to attend an investigation in connection with his leaving the property willfully and without authority, failure to submit a drug test and failure to provide a written report in connection with the derailment. A hearing was conducted on May 22, 2009. Based on the evidence adduced at the hearing, the Carrier dismissed Claimant from service for violating GCOR Rules 1.13 (Conduct), 1.13, (Accidents, Injuries and Defects,

1.2.7 (Furnishing Information; 1.4 (Carrying Out Rules and Reporting Violations); 1.13 (Reporting and Complying with Instructions); and 1.15 (Duty - Reporting or Absence).

The Carrier denied the claim. The Organization appealed the denial up to the Carrier's highest designated official, but without resolution. The Organization then invoked arbitration, and the dispute was referred to this Board.

POSITIONS OF THE PARTIES: The Carrier argues that it met its burden to prove Claimant's violations of the multiple Rules cited. It asserts that Claimant, as an experienced employee who had been involved in a previous derailment, was well aware of the procedures to be followed, which required him to remain on scene and carry out his responsibilities. BNSF urges that his conduct amounts to running from the scene, and urges an inference that he was concealing additional misconduct.

The Carrier argues that the penalty of dismissal for these violations was warranted, based on the nature and intentionality of Claimant's conduct and on his previous record, including his previous dismissal and subsequent reinstatement on a leniency basis and his four previous Level S violations. It urges that the claim be denied.

The Organization argues that the investigation in the instant matter was fatally flawed because the Carrier failed to have Katherine McHenry in attendance and did not document the accuracy of her statement. It maintains that the Organization was ready to proceed with the investigation at the date, time and location set for the hearing, but the Carrier failed to do so without Claimant in attendance, notwithstanding its practice of doing so. UTU contends that the procedural errors are fatal to the discipline and that it must be set aside on those bases.

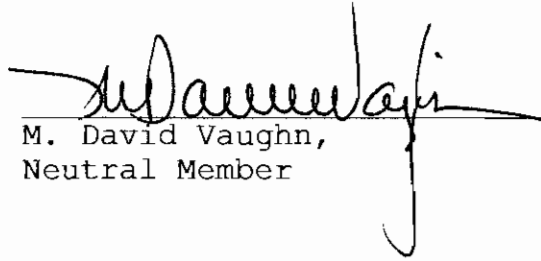
As to the merits of the dispute, the Organization argues that the Carrier failed to meet its burden of proof, providing only conjecture, not proof, that Claimant breached an obligation to provide a statement, or undergo a drug test. It asserts that the statement from Ms. McHenry confirms that the Trainmaster informed Claimant to go home for the day, without instructing him to provide a statement or take a drug test. UTU urges that the claim be sustained as written.

DISCUSSION AND ANALYSIS; In Case No. 106, this Board denied the Organization's claim protesting Claimant's dismissal for his conduct in the events which led to the derailment which preceded the events at issue in this proceeding. Nothing in this case

impacts on the Board's ruling in that Case, which upheld Claimant's dismissal. That ruling terminated Claimant's employment with the Carrier and renders this case moot. The Award will so reflect.

AWARD: The Claim is dismissed as moot.

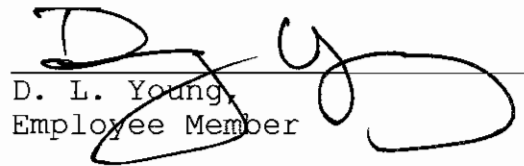
Dated this 4th day of November 2010.



M. David Vaughn,
Neutral Member



Gene L. Shire,
Carrier Member



D. L. Young,
Employee Member