

PUBLIC LAW BOARD NO. 6721

In the Matter of the Arbitration Between:

**BURLINGTON NORTHERN SANTA FE  
RAILWAY COMPANY**

and

**UNITED TRANSPORTATION UNION**

NMB Case No. 22

**Claim of C. P. Campbell**

Dismissal: Running Red  
Signal

**STATEMENT OF CLAIM:** Request the reinstatement of Conductor C. P. Campbell in 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 February 24, 2004 until returned to service as a result of the Formal Investigation held on January 24, 2004.

**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 March 10, 2006, at Washington, D.C. Claimant was not present at the hearing. The Board makes the following additional findings:

The Carrier and Organization are Parties to a collective bargaining agreement which has been in effect at all times relevant to this dispute, covering the Carrier's employees in the Trainman and Yardman crafts.

Claimant was employed by the Carrier as a Trainman. At times relative to this dispute, he was assigned as a Conductor on the M-SBDBAR1-21 on duty at 2100 hours on December 29, 2003 at San Bernadino. Claimant and his crew received their orders and attached power to the train. Claimant then lined the B1 Switch and returned to his train, which accelerated and immediately passed the red pot signal at the top of B Yard without stopping. The train passed the signal by six locomotive and 18 car lengths.

Management became aware of the possible violation and undertook a preliminary investigation. They observed the scene, interviewed Claimant and his crew and reviewed the applicable signal logs, ruling out a false clear. The preliminary investigation indicated that the signal system was operating properly and had displayed a solid red "Stop" signal.

The Carrier scheduled an investigation, which convened on January 24<sup>th</sup>, following postponements. At the hearing, it was not

disputed that the signal was operating properly and displayed a red signal, which Claimant and his crew passed without authorization, in violation Rule 9.1.15, Signal Aspects and indications (Stop) of the General Code of Operating Rules. That Rule requires that any train encountering a single aspect solid red signal is required to stop.

Claimant testified that he could not see the signal at the time the train approached it because he "was too far back in the B6 in order to see the signal" and that he "wasn't really looking for that signal at that time because [he] had a lot of trust in [his Engineer] and [he] knew that once [he] got up there, [he] could actually see the signal." Indeed, he testified that he had his back to the signal and was in the nose of the locomotive as it approached the signal. He did not look at the signal.

According to Claimant's further testimony, he was in the nose of the train and proceeded to the bottom of the step and heard the dispatcher say "what is going on in the B Yard?" and then heard him instruct the crew to stop the train. He testified that he then asked the Engineer if he "had the signal" and was advised that he did.

The Engineer testified, by contrast, that Claimant boarded the train and gave him a "proceed" signal; he acknowledged that he did not look at the signal, but assumed that it was flashing red.

Based on the record developed therein, the Carrier dismissed Claimant from service for violation of GCOR Rule 9.1.15. The Organization protested the Carrier's action, seeking his reinstatement and payment for all time lost. The claim was progressed on the property in the usual manner, but without resolution; and it was submitted to this Board for disposition.

**POSITIONS OF THE PARTIES:** The Carrier argues that it established cause for Claimant's dismissal by substantial credible evidence. It asserts that running a red signal is one of the most serious violations which an employee can commit; and it maintains that the evidence clearly establishes that Claimant and his crew did so. The Carrier argues that Claimant changed his story during the course of the hearing, but maintains that whichever version is accepted, he clearly failed in his responsibility to be alert and to view and call out all signals.

The Carrier acknowledges its obligation under the Policy for Employee Performance Accountability ("PEPA") to impose discipline in a progressive and corrective manner, but points out that dismissal is appropriate under the Policy for a single aggravated

offense - as the Carrier contends passing a red signal was - as well as when an employee has incurred two serious rules violations within a 36 month period. It points out that Claimant was on probation for a previous Level S violation at the time he passed the red signal.

The Carrier rejects the Organization's argument that Engineer Carr, and not Claimant, was the crew member at fault. It asserts that the argument that Claimant was never in a position to see the signal is inconsistent with the evidence and maintains, instead, that Claimant simply failed to look. BNSF argues that Claimant, as the Conductor, had a duty to be aware of all signals. It contends that he failed that responsibility.

The Carrier also rejects the Organization's argument that Engineer Carr moved the train at a time when he knew Claimant could not see the signal, thereby absolving Claimant of responsibility. It points out that Carr testified that Claimant gave him a "proceed" signal when he mounted the locomotive. Moreover, that signal did not change Claimant's responsibility for choosing not to look at the signal. Indeed, if Claimant believed that Carr had moved the train without his permission, it was Claimant's responsibility to stop the train at once, rather than trust Carr.

The Carrier contests the Organization's assertion that the penalty of dismissal was unduly harsh. It points to the seriousness of the violation and to the fact that Claimant was on probation for a previous serious violation at the time of the incident at issue. The Carrier maintains that it utilizes dismissal only as a last resort.

The Carrier urges that the claim be denied.

**The Organization** argues that the Carrier failed to prove Claimant at fault in the incident and asserts that the penalty of dismissal was arbitrary and excessive under the circumstances.

The Organization does not contest that the train passed a red signal, but argues that Engineer Carr was the crew member at fault because Claimant was never in a position to see the signal and necessarily relied on his Engineer. Moreover, contends UTU, Engineer Carr improperly moved the train at a time when he knew Claimant could not see the signal, thereby effectively removing Claimant from control over the train. It points out that Engineer Carr accepted responsibility for the violation. Moreover, contends the Organization, not only did Claimant trust his Engineer, but he also believed, based on his conversations with the Train Master and Dispatcher that the signals were lined up for his train.

The Organization also asserts that the penalty of dismissal was unduly harsh, in light of the circumstances.

The Organization urges that the claim be sustained and Claimant reinstated to service and made whole.

**DISCUSSION AND ANALYSIS:** The Carrier had the burden to prove Claimant's guilt of the charges by substantial credible evidence on the record as a whole, and to establish the appropriateness of the penalty of dismissal. For the reasons which follow, the Board is persuaded that the Carrier met its burden.

It is not disputed that Claimant's train passed a red signal by a substantial distance. The seriousness and potential consequences of such a violation cannot be overstated. It is well established in the industry that passing a red signal is a dismissible offense.

As Conductor of the train, Claimant was responsible for ensuring compliance with all applicable rules, including an affirmative duty to observe all signals. Those responsibilities cannot be delegated and are not excused by the fact that some other crew member also failed to observe a signal.

The evidence persuades the Board that Claimant would have been able to observe the signal; his explanations of where he was and what he was doing at the time of the violation do not establish his inability to do so. Instead, he simply failed to observe the signal and assumed that the Engineer would observe the signal indication and comply with it. Claimant's explanations do not excuse the violation and, indeed, demonstrate the reason that all crew members are responsible to observe and comply with signal indications.

As to the Organization's argument that the penalty of dismissal was excessive, the Board is not convinced. Running a red signal is, as indicated, among the most serious violations an employee can commit. Claimant was clearly responsible for allowing his train to pass the signal. Moreover, Claimant's violation was his second serious violation within 36 months; he remained on probation from the first violation at the time of the instant violation. PEPA makes a second serious violation under such circumstances grounds for dismissal. The Board is not persuaded that Claimant's dismissal was arbitrary or excessive.

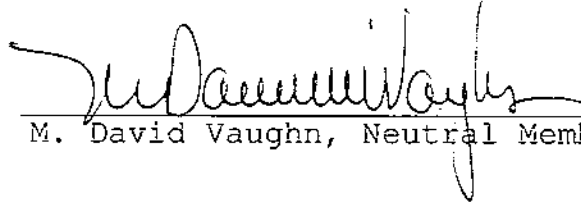
PLB 6721

Case No. 22, Claim of C. P. Campbell

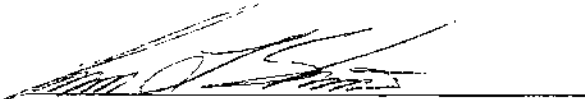
Page 5

**AWARD:** The Carrier proved Claimant's responsibility for passing a red signal and proved the appropriateness of the penalty of dismissal. The claim is denied.

Dated this 20 day of June, 2006.



M. David Vaughn, Neutral Member



Gene L. Shire  
Carrier Member



R. L. Marceau  
Employee Member