

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6798

PARTIES UNITED TRANSPORTATION UNION

TO and

DISPUTE THE BURLINGTON NORTHERN and SANTA FE RAILWAY CO.

COAST LINES

AWARD NO. 5

CASE NO. 5

Organization File No. M-24-980

Carrier File No. 61-03-0024D

STATEMENT OF CLAIM:

Request on behalf of California Division Foreman, C. M. Hallin, for removal of the Level S Thirty (30) Day Record Suspension and the three year probationary period and pay for time lost for attending the investigation, which was held on April 2, 2003, for allegedly violating General Code of Operating Rules, Fourth Edition Effective April 2, 2002, 1.1, 1.13 and 1.15.

STATEMENT OF FACTS:

C. M. Hallin ("Claimant") with seniority date of August 7, 2000, was working yard job Y-LACO402-08A as Foreman on March 8, 2003 and received his job briefing at 2:45 P.M., the start of his shift. Immediately following the briefing, he was instructed

by Terminal Manager, B. D. Shoemake ("Shoemake"), to contact the next on duty Terminal Manager, B. Johnson ("Johnson"), prior to tying up and going home.

Sometime between 7:30 and 8:30 P.M. Johnson learned that Claimant tied up and went home without contacting him as he (Claimant) was instructed to do by Shoemake. Johnson, not having access to Claimant's phone number, called crew member Engineer, Larry Reyes, via cell phone, to locate the whereabouts of the crew when he learned that the Foreman (Claimant) had given instructions to the crew to tie up early and go home. Claimant did not contact Johnson before leaving.

Claimant admitted tying up early and leaving without contacting Johnson, maintaining that he was not sure who it was he was told to contact. An investigation was conducted April 2, 2003 and Claimant was found guilty of violating the GCOR as follows:

Rule 1.1 Safety

Safety is the most important element in performing duties. Obeying the rules is essential to job safety and continued employment.

Rule 1.13 Reporting and Complying with Instructions

Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties.

Rule 1.15 Duty – Reporting or Absence

Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must spend their time on duty working only for the railroad. Employees must not leave their assignment, exchange duties, or allow others to fill their assignment without proper authority. Continued failure by employees to protect their employment will be cause for dismissal.

Grievant was assessed a Level S Thirty (30) Day Record Suspension and a probationary period of three years.

FINDINGS:

Based upon the record, the Board finds that the parties herein are the Carrier and the Employer Representative within the meaning of the Railway Labor Act, as amended. This Board is duly constituted by agreement of the parties and has jurisdiction over this dispute.

The Board finds that the Carrier complied with its usual practice when it duly and timely provided a job briefing to Claimant at the beginning of the shift. The Board further finds that at the completion of the job briefing, Claimant was instructed by Shoemake to contact Johnson, the next on duty Station Manager, prior to tying up and leaving for the day. Claimant acknowledged the receipt of Shoemake's instructions but nevertheless Claimant contacted the Trainmaster prior to tying up for the day instead of the on duty Station Manager as instructed. The Board concludes from the testimony that it was the practice of the Trainmaster to give job instructions and not the Station

Manager. Claimant acknowledged that said statement of the practice was accurate and correct. Therefore, the Board finds that Claimant knew or should have known that following instructions given by the Station Manager was imperative and a violation would result in discipline.

Finally, the Board dismisses Claimant's argument that he acted appropriately when after forgetting who he was directed to call, he called the Trainmaster although contrary to his instructions. The fact that it was the usual practice to call the Trainmaster rather than the Station Manager, his action in the instant matter was inexcusable as a consequence of his receipt of specific and direct instructions to call Johnson.

The Board finds no merit in the Organization's argument that the Carrier acted inappropriately when it denied Claimant's opportunity to call Trainmaster Ryan Craft as a witness. The Board relies upon the ruling of Neutral Wallin in Public Law Board No 4901, Award 233, which position was upheld by this Board in Award No. 1. Wallin held that an Organization's objection to missing witnesses will not be sustained in the absence of "relevant information [that] the missing witnesses would have added to the record." This Board agrees with Wallin's conclusion and finds the Organization in the instant matter failed to furnish the requisite information.

In addition, the Board rejects Claimant's argument that Shoemake inaccurately testified as to how the instructions were delivered to Claimant. Shoemake submitted that he went down three flights of stairs to deliver instructions to Claimant while Claimant

argued that the instructions were given by phone. The Board concludes that how the message was delivered has no material value inasmuch as Claimant admitted receiving Shoemake's instructions.

Finally, the Board reviewed Third Division Award No. 27750 wherein Neutral Goldstein concluded,

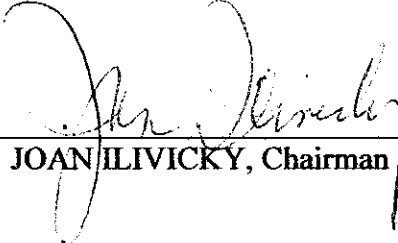
Claimant's alleged inability to remember the specifics of the instructions given him does not diminish [the Claimant] or excuse [Claimant] of his responsibility to comply with these instructions. Once again, if Claimant was unclear of the Terminal Manager's instructions it was incumbent upon him to ask for clarification, which he did not.

Based upon the foregoing, Neutral Goldstein concluded that Claimant in Goldstein's matter, violated GCOR Rules 1.13 and 1.15. In the instant matter, this Board reaches the same conclusion, upholding the findings of the Carrier.

AWARD:

The Level S Thirty (30) Day Record Suspension is appropriate. However, the three year probationary period assessed Claimant is excessive in light of his employment record which includes two commendations and no other disciplines during the two and one half years of his employment prior to the time of the instant incident and the probationary period herein shall be removed and expunged from his record.

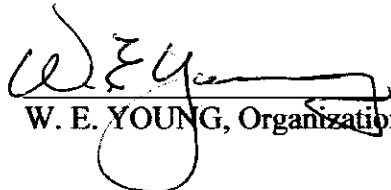
The Carrier shall comply with this Award within thirty (30) days of date of issuance.



JOAN ILIVICKY, Chairman and Neutral Member



GENE L. SHIRE, Carrier Member



W. E. YOUNG, Organization Member

Dated: April 26, 2006