

PUBLIC LAW BOARD NO. 4901

AWARD NO. 147
CASE NO. 147

PARTIES TO
THE DISPUTE:

United Transportation Union
vs.
Burlington Northern Santa Fe Railway Company
(Coast Lines)

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied.

DATE: April 9, 2001

STATEMENT OF CLAIM:

"Request in behalf of Valley Division Yardman T. J. Panos for the alleged violations of Rules 1.6 and 1.15 of the General Code of Operating Rules, effective April 10, 1994, and that the Claimant be reinstated to the service of the Burlington Northern Santa Fe Railway Company, Coast Lines, with seniority and all other rights unimpaired and pay all time lost including Health and Welfare Benefits beginning on July 16, 1997, and continuing until returned to service and removal of the Claimant's alleged failure to report for duty as Switch Foreman at 11:00 P.M. on June 17, 1997 for Switch Assignment YST301 and the Claimant's alleged failure to comply with instructions from proper authority concerning work attendance, and removal in addition to above Rules 1.6 and 1.15, any other rules as appropriate which may be determined by testimony given at the July 2, 1997 Investigation, from the Claimant's personal record."

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.

It is undisputed that Claimant did not report for his yard assignment at 11:00 p.m. on June 17, 1997. It is also undisputed that he did not telephone the Carrier until approximately 2:20 a.m. on June 18th. Finally, Claimant admits he did not contact his supervisor or the trainmaster on duty regarding the absence. Instead, he called the crew office to ask that he be marked up to perform the same assignment on the evening of June 18th.

According to his testimony, Claimant left home for work between 10:20 and 10:30 p.m. The travel time normally ranged between 30 and 35 minutes. He experienced a flat tire some six to seven miles out of Linden, California. He also discovered that his spare tire was flat. It took him between one and two hours to walk back to Linden, wake up a tire repairman he knew, drive back to his vehicle, retrieve the flat tires, take them back to the shop, repair them, drive back to his vehicle, and replace the tires. At this point, Claimant said he "... left."

When asked why he did not contact the Carrier until 2:20 a.m., Claimant replied, "Cause I had called at the first means of - - that I had access to a telephone." When asked if there was a phone at the tire repair shop, Claimant said, "I don't know." When questioned about whether he asked the shop owner if there was, Claimant said, "No, I did not." However, tire repair receipts introduced in evidence by Claimant prominently show a telephone number for the business.

Moreover, during later questioning, Claimant testified that after repairing his van and ensuring that it was safe and secured, he "... came back to the shop and called, notified the crew desk ..."

Claimant's supervisor testified that he had instructed Claimant to call him personally, or the trainmaster on duty if he was unavailable, regarding future attendance problems. These instructions were delivered to Claimant on January 21, 1997. This was in connection with another failure to report for duty in that time frame, which formed the subject matter of Award No. 157 of this Board.

According to the supervisor's testimony, when Claimant was asked why he did not call as instructed, Claimant replied, "Do you expect me to remember something that happened three or four months ago?" During his testimony, however, Claimant had no recollection of any instructions requiring him to personally call his supervisor or the trainmaster in the event he would be unable to report for duty on time.

For the reasons explained in Award No. 157 of this Board, the procedural objections raised by the Organization are found to lack merit. Our review fails to reveal any significant procedural defects.

The Organization also challenges the penalty as being harsh, arbitrary and excessive. Several important factors bear on this question. First, Carrier's Policy on Employee Performance Accountability (PEPA), calls for the discharge penalty upon the fourth occurrence of non-aggravated misconduct within a three year period. This progressive discipline schedule closely parallels those used in a wide spectrum of industry in the United States. It is not found to be inherently unreasonable. Moreover, the instant episode was Claimant's sixth such offense within the three-year period and his fourth involving failure to report for duty as required. Under PEPA, therefore, dismissal is the proper penalty.

Second, substantial evidence supports the Carrier's determination that Claimant also violated Rule 1.6 by failing to comply with his supervisor's instructions that required personal contact. The instant episode, therefore, represents a double rule violation.

Third, the instant episode came less than ten days after Claimant had been reinstated to service on June 10th from a dismissal for similar misconduct occurring in January of 1997.

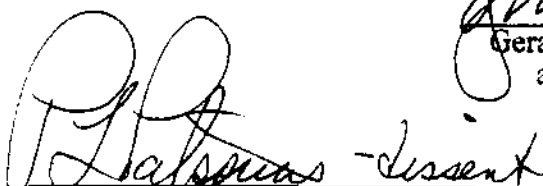
Finally, substantial evidence in the record justified the Carrier in heavily, if not entirely, discounting the credibility of Claimant's testimony that purported to explain his absence, his untimely notification to the crew office, and his recollection of his supervisor's instructions.


Given the overall state of the evidentiary record, we find no proper basis for disturbing the Carrier's disciplinary action.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


P. L. Patsouras,
Organization Member


Gene L. Shire,
Carrier Member