

PUBLIC LAW BOARD NO. 4901

**AWARD NO. 87
CASE NO. 87**

**PARTIES TO
THE DISPUTE:**

United Transportation Union

vs.

Burlington Northern Santa Fe Railway Company
(Coast Lines)

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied

DATE: September 19, 2000

STATEMENT OF CLAIM:

"Request in behalf of Albuquerque Division Brakeman/Conductor D. J. Pearce, for the discipline to be expunged from his personal record including the Level 4 conditional suspension for his infraction of Rule 1.5, and also a Level 4 suspension for infraction of Rule 1.13, both Rules of General Code of Operating Rules, Third Edition, effective April 10, 1994, and that he be paid for all time lost because of this incident as a result of the Formal Investigation held on July 21, 1994."

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 parties agreed the matter was before the Board on the merits of the dispute.

Claimant went on duty on the evening of May 24, 1995. After midnight, Claimant was suspected of having the odor of alcohol on his breath. According to the General Superintendent of Train Handling ("GSTH"), who arrived on the scene some seven hours after Claimant went on duty, he thought he detected the odor of alcohol when Claimant was asked to blow in his face. After walking to the office, the GSTH asked Claimant "... to wait for me ..." while further instructions were obtained. Claimant left the office area while the GSTH was on the phone.

Claimant obtained his own blood and urine tests for ethanol later that morning. The samples were collected around 6:00 a.m., which was some eight hours after he went on duty the previous evening. The test results showed 0.008 g/dL.


Although the record contains considerable testimony about Claimant's performance and whether he was under the influence of alcohol on May 24-25, impairment due to the influence of alcohol is not the proper standard of review. Instead, Rule 1.5 prohibits "... any measurable alcohol ..." in breath or body fluids. The test results did reveal a measurable amount.

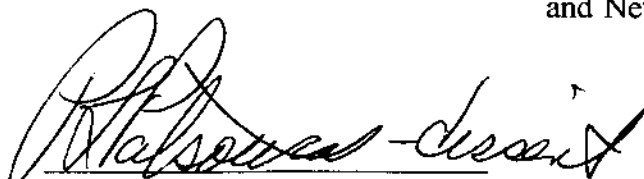
The testimony of the GSTH and the assistant trainmaster, who was also present in the office, constitute substantial evidence that Claimant was told to remain in the office until the GSTH returned from making phone calls. Claimant did not do so.

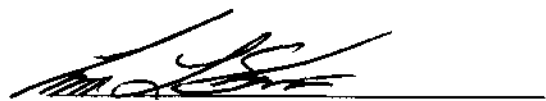
Given the foregoing factors, this Board finds Carrier's disciplinary action to be supported by substantial evidence in the record. Accordingly, we have no proper basis for disturbing Carrier's handling of the matter.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


P. L. Patsouras,
Organization Member


Gene L. Shire,
Carrier Member