

PUBLIC LAW BOARD NO. 4901

AWARD NO. 68
CASE NO. 68

PARTIES TO
THE DISPUTE: United Transportation Union (CT&Y)

vs.

Atchison, Topeka and Santa Fe Railway
(Coast Lines)

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained in accordance with the Findings.

DATE: April 17, 1996

STATEMENT OF CLAIM:

Request in behalf of Albuquerque Division Brakeman R. P. Estudillo for payment for the time of his suspension by The Atchison, Topeka and Santa Fe Railway Company, Coast Lines, commencing at 12:01 A.M. on August 6, 1993, and continuing and expiring at 12:01 A.M. on August 27, 1993, time lost for attending the Investigation, and that the 20-day suspension be removed from the Claimant's record as a result of the Investigation held on July 12, 1993.

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.

On June 29, 1993, Claimant was involved in a rough coupling on Carrier's mainline track at Mobest, Arizona. Despite the higher than normal impact of the coupling, there was no damage. The crew proceeded to accomplish their duty assignment. The incident came to light only after the conductor later made a report of minor injury as a result of jumping to the ground just prior to impact.

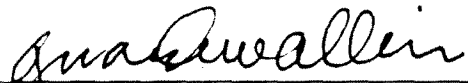
Following investigation, Carrier determined there was joint responsibility between the engineer and Claimant for the rough coupling. The engineer, however, was only assessed a deferred

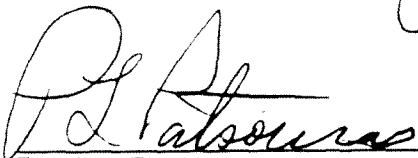
suspension that did not produce an actual loss of pay as contrasted with Claimant's 20-day loss of pay.

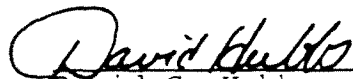
The record of investigation contains conflicting testimony regarding this incident. Nonetheless, after careful review, we find that Carrier had sufficient substantial evidence upon which it could determine discipline was appropriate. Our review, however, fails to reveal any justifiable evidentiary basis for assessing disparate discipline between the two jointly responsible employees. On this record, we are forced to conclude that Claimant's 20-day suspension is unreasonably harsh under the circumstances. Claimant's 20-day suspension, therefore, is reduced to a deferred suspension equal to that assessed the engineer. Accordingly, Claimant is to be restored for all losses attributed to the actual suspension.

AWARD:

The Claim is sustained in accordance with the Findings.


Gerald E. Wallin, Chairman
and Neutral Member


P. L. Patsouras,
Organization Member


David S. Hubbs,
Carrier Member

Dated this 17th day of April, 1996 in St. Paul, Minnesota.