

PUBLIC LAW BOARD NO. 4901

AWARD NO. 82
CASE NO. 82

PARTIES TO
THE DISPUTE:

United Transportation Union

vs.

Burlington Northern Santa Fe Railway Company
(Coast Lines)

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained in accordance with the Findings.

DATE: September 13, 2000

STATEMENT OF CLAIM:

"Request in behalf of Richmond Engine Foreman E. B. Greenwell for the removal of the Level 3 Suspension of 20 days, commencing at 12:01 A.M. on January 18, 1995, to be reinstated to service at 12:01 A.M. on February 7, 1995, and his alleged violation of Rules 1.1, 1.4, and 1.13 of the General Code of Operating Rules from his personal record and that the Claimant be reinstated to the service with seniority and all other rights unimpaired and with pay for all time lost beginning on January 17, 1995, and continuing until returned to service as a result of the Investigation conducted on January 17, 1995."

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.

Claimant injured his right knee on May 10, 1994 but felt it was minor and did not want medical treatment. Accordingly, a Minor Injury Report was completed and Claimant was given a copy. Paragraph F of the Minor Injury Report contained the following directive:

The employee must promptly notify supervision of any complication, need for professional medical care, lost or restricted work subsequent to this report. Such information may require completion of form 1421 and other usual injury documents. At that point, the Minor Injury Report and all other documents will become part of the employee's personal record.

Our review of the investigation transcript discloses substantial evidence in support of the Carrier's determination that Claimant twice sought medical attention for the injury on October 20 and November 2, 1994 without properly notifying his line of supervision about the change in circumstances. His communication with Carrier claim agents did not satisfy the requirement that he inform his direct line of supervision. Carrier had proper cause, therefore, to hold Claimant accountable.

Our review of disciplinary action is always a two-part analysis. We examine the evidence first to determine whether substantial evidence supports the determination of culpability. Secondly, we examine the record to determine whether the disciplinary penalty assessed is reasonable in light of all of the relevant circumstances. Even where guilt is established, the disciplinary penalty must still "fit the crime."

Absent a collectively bargained schedule of infractions and corresponding disciplinary sanctions, and there is no such schedule cited in this record, disciplinary penalties should closely conform to the underlying purpose of a reasonable disciplinary program: To be corrective and not punitive.

On this record, we find the 20 day suspension to be harsh, excessive and unduly punitive. There is no evidence that Claimant sought to evade his reporting obligation or deceive his supervision in any manner whatsoever. Instead, he freely discussed his worsening problem with the Carrier claim agent that had worked with him in connection with an earlier injury to the same knee. He thought he was properly complying with the reporting requirement and the overall circumstances lend credence to his belief. Although Claimant was technically incorrect in his belief, the evidentiary record does not come close to showing his actions to have been a blatant disregard of his reporting obligation, as Carrier contended in its submission.

Careful review of the record fails to reveal sufficient justification for the imposition of a lengthy suspension under the circumstances at hand. In the absence of previous related misconduct, which is the case here, the disciplinary penalty should ordinarily be assessed at the lowest level commensurate with the corrective purpose of disciplinary programs. Given the lack of an apparent rationale to support the penalty imposed, we are compelled to reduce it to the proper level. Carrier is directed to reduce the penalty to a one (1) day suspension and compensate Claimant for all losses in excess of this level.

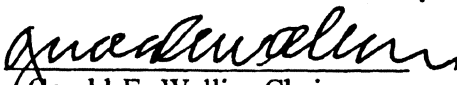
Our review of the record fails to reveal support for any of the procedural objections

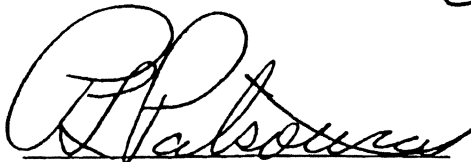
advanced by the Organization.


Carrier is directed to comply with this award within thirty days.

AWARD:

The Claim is sustained in accordance with the Findings.


Gerald E. Wallin, Chairman
and Neutral Member


P. L. Patsouras,
Organization Member


Gene L. Shire,
Carrier Member