PUBLIC LAW BOARD NO. 4901

AWARD NO. 143 CASE NO. 143

PARTIES TO

THE DISPUTE: United Transportation Union

VS.

Burlington Northern Santa Fe Railway Company (Coast Lines)

ARBITRATOR:

Gerald E. Wallin

DECISION:

The Claim is denied.

DATE:

April 17, 2001

STATEMENT OF CLAIM:

"Request in behalf of Valley Division Conductor R. L. Pugh for the removal of the Level 3 Suspension of twenty (20) days, the Probation Period of three (3) years, and alleged violations of the Carrier's Rules 1.1.3, 1.2.5, 1.6, and 1.13 of the General Code of Operating Rules effective April 10, 1994, as supplemented and amended, from the Claimant's personal record, and that the Claimant be exonerated of all violations of Rules and paid for all time lost beginning on February 25, 1997 and continuing until returned to service, as a result of the Investigation held on November 20, 1996, concerning the Claimant's alleged incident of injury which occurred at Stockton, California on October 25, 1996, while working the 8-199-23 train."

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.

While setting out cars from his train in Stockton, California, Claimant felt pain in his left foot at approximately 1:30 p.m. on October 25, 1996. He had injured the foot two weeks earlier. His delayed reporting of that injury to Carrier comprises the subject matter of Award No. 148 of this Board.

Despite the reinjury or aggravation of the original injury, Claimant did not report the event to the trainmaster at Stockton, who was on duty. Instead, Claimant again delayed reporting the event until he tied up approximately five hours later at Richmond, California. According to his testimony, the Stockton terminal was busy and he did not want to hold up operations. His train was on the mainline and an Amtrak train was coming along behind.

According to the Carrier's testimony, Claimant was instructed that injuries need to be reported immediately. He was told this in connection with his original injury two weeks earlier.

The procedural objections raised by the Organization concerning absent witnesses are found to lack merit for the same reasons explained in Award No. 148. No other procedural objections of significance were noted from our review of the record.

On the merits, the record presents substantial evidence in support of the disciplinary action. It is clear that Claimant knew he experienced a reportable event. Indeed, that is precisely why he did report the matter upon arriving in Richmond. It is also clear that Claimant he been informed, only two weeks previously, of the importance of immediate reporting. Finally, even Claimant admits he did not report the matter until some five hours after the fact. While his reasons for delaying the report may be understandable in light of the existing operational circumstances, his actions

nevertheless violated the Carrier rules stated in the hearing officer's decision.

Given the fact that this was the second violation of a similar nature within two weeks coupled with the fact that the violation involved the disregard of explicit instructions to the contrary, we do not find the discipline imposed to have been unreasonable.

AWARD:

The Claim is denied.

Gerald E. Wallin, Chairman and Neutral Member

P. L. Patsouras,

Organization Member

Gene L. Shire,

Carrier Member