

PUBLIC LAW BOARD NO. 6540

AWARD NO. 13

CASE NO. 13

Organization File: D010621.1

Carrier File: 71-01-0997

PARTIES TO
THE DISPUTE:

Brotherhood of Locomotive Engineers

vs.

The Burlington Northern Santa Fe Railway Company

ARBITRATOR: Gerald E. Wallin

DECISIONS: Claim sustained

STATEMENT OF CLAIM:

"That the discipline of Brakeman F. L. Crenshaw (the Claimant) be reversed, that he be made whole for all time and benefits lost, including time attending the investigation, and that the notation on his personal record be removed as a result of this incident and investigation."

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 received discipline of a Level S suspension of 30 days actual and a 3-year probationary period as a result of allegedly violating the Carrier's rule regarding missed calls. At the time of the alleged infraction, Claimant had some twenty-seven years of service. His work record showed one prior missed call during this period with none in more than a decade.

The Organization advanced both procedural and substantive challenges to the discipline. After careful review of all of the relevant circumstances, the Board finds itself compelled to decide this dispute on a procedural basis.

It is undisputed that the Carrier has committed itself in the parties' Agreement to provide the Organization with a copy of the investigation transcript when requested. Notwithstanding this explicit commitment, a failure to abide by it in rare and isolated instances through inadvertent oversight and where no prejudice is demonstrated will ordinarily not warrant the imposition of a remedial sanction. However, where the Carrier's record of compliance manifests a flagrant and inexcusable pattern of indifference to its contractual commitment, such non-compliance becomes an Agreement violation that requires this Board to provide a proper remedy; we cannot faithfully fulfill our role as an impartial reviewer of submissions if we turn a blind-eye to a flagrant and inexcusable pattern of Agreement violations.

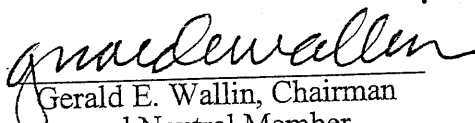
The instant dispute is the sixth out of the first nine cases presented to this Board for decision

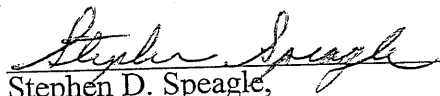
where the Carrier has not kept its commitment to provide a properly requested transcript of an investigation. In Case No. 3, no exhibits were supplied with the transcript. In Case No. 4, no transcript was provided until after the matter reached the Carrier's highest designated officer. In Case No. 5, no transcript was provided although the dispute was decided on other procedural grounds. In Case No. 9, no exhibits were provided. In Case No. 11, no exhibits were provided. In the instant dispute, the Organization had to file its initial appeal without the benefit of a complete transcript.

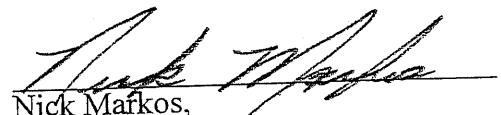
We are compelled to find that the foregoing frequency of non-compliance demonstrates a flagrant pattern of Agreement violation by the Carrier. As such, it calls for an appropriate remedial sanction. Under the circumstances, we find that the appropriate sanction for such inexcusable and consistent failure to supply a properly requested transcript is to deny the Carrier the ability to use the transcript to support its disciplinary action. Without such a supporting transcript, claims must ordinarily be sustained. Such is the case here.

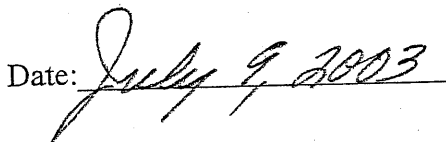
AWARD:

The Claim is sustained.


Gerald E. Wallin, Chairman
and Neutral Member


Stephen D. Speagle,
Organization Member


Nick Markos,
Carrier Member

Date:  July 9, 2003