

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6672**

Parties to Dispute:)	
)	
UNITED TRANSPORTATION UNION)	<u>OPINION AND AWARD</u>
and)	CASE No. 10
)	
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY)	Claimant H. E. Tony
)	
)	

STATEMENT OF CLAIM:

“Claim in behalf of Conductor H. E. Tony for all lost earnings and record clearance account 20 days suspension February 17, 1996 through March 7, 1996 for alleged violation of GCOR Rule 1.15 (Duty Reporting or Absence) and Superintendent’s Notice No. 22 (Conductor’s Reporting Requirements).”

FINDINGS:

The Board finds that the parties herein are Carrier and Employee as defined by the Railway Labor Act, as amended; that the Board has jurisdiction over this dispute; and that due notice of the hearing thereon has been given to the parties.

The record before the Board indicates that Claimant Tony was hired as a trainman on May 18, 1992. On March 23, 1995 he reported late for work and was assessed a five-day suspension. On December 31, 1995 he then failed to remain available for work and received a 15-day deferred suspension. Two months later he again reported one hour and thirty minutes late for service and was issued a 20-day suspension.

On January 18, 1996, Claimant was called to report at 0500 hours. Although he accepted the call, when the Trainmaster attempted to meet with the crew at 0545 hours Claimant had not yet reported for duty nor called to advise that he would be late. When called at his home, he indicated he had attempted to come in, had experienced car trouble but would be there in 25 minutes. When at 0620 hours Claimant had not yet arrived he was replaced, ultimately arriving at approximately 0630 hours. The 20-day suspension now

challenged by the Organization ensued, triggering the earlier 15-day deferred suspension imposed for the December 31, 1995 incident.

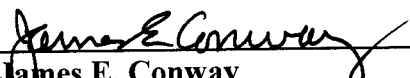
According to the undisputed facts developed at Claimant’s investigation held January 23, 1996, his failure to report on time caused a one hour and twenty-five minute delay on a scheduled train operating between Seattle-Vancouver-Pasco. Claimant explains his late report in terms of vehicle problems experienced enroute to work at around 0430 hours. After initially stating that he had called the crew office to report his problem, he conceded that in fact the crew office had called him at 0530. He further admits that in completing his Delay Report for Train 688 on that day he failed to mention any delay encountered on his train due to his late report.

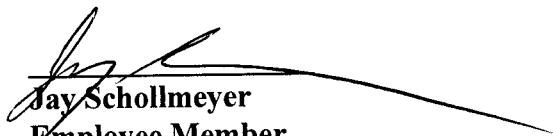
Trainmen are obviously required to report at times designated and complete factual reports when their train movements are delayed. Here Claimant did neither. In light of his failure to report his car trouble even though at home and obviously able to do so, Carrier’s Hearing Officer rejected his automotive breakdown story as incredible. Since there is nothing patently arbitrary about that determination, under the rules governing this quasi-appellate forum, the Board is bound by that conclusion.


The only remaining issue centers on whether the discipline imposed was proportionate to the offense. With the rule violation of January 18 clearly demonstrated and in view of Claimant’s prior personal record involving progressive discipline for similar violations, the discipline imposed cannot be considered excessive. Accordingly, the Claim is denied.

A W A R D

The Claim is denied.


James E. Conway
Chairman and Neutral Member


Jay Schollmeyer
Employee Member


Roger A. Boldra
Carrier Member

Dated: November , 2008
Great Falls, VA