

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

Parties to Dispute:

UNITED TRANSPORTATION UNION

and

THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY

OPINION AND AWARD

CASE No. 33

Claimant T. L. McDonald

STATEMENT OF CLAIM:

“Claim in behalf of Vancouver, WA Conductor T. L. McDonald for pay for all lost wages and complete record clearance account 30 day suspension (3 actual days, 27 days deferred) for alleged violation of Safety Rules S-13.5 and S-13.5.2 (alleged getting on and off moving equipment) on April 24, 2000.”

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.

Claimant McDonald, a thirty-year employee at the time of the incident giving rise to this claim, had been working as a conductor on Train R-RG4401 on April 24, 2000 when he was observed by Carrier officials getting off moving equipment at Camas, Washington. Following formal investigation conducted on May 1, 2000, by letter dated May 11, 2000 he was issued a Level S suspension of 30 days (3 actual, 27 deferred) for violation of applicable safety rules and assigned a probation period of one year. The Organization protested that action by filing a timely claim which it advanced to this Board for final determination after exhausting the appeal process in case handling on the property.

The facts surrounding the incident at issue are undisputed. At 11:15 -11:30 a.m. on April 24, 2000, BNSF Vancouver Terminal Superintendent G. L. Luck and Terminal Manger T. L. Keene had been conducting FRA-required operations testing when they observed Claimant step off the back of his moving locomotive to throw a switch as the train

approached them from the east. Concluding that his action was in apparent violation of Carrier's Rule S-13.5 concerning getting on and off moving equipment, both men approached him.<sup>1</sup> In the ensuing discussion, Claimant freely acknowledged that he had gotten off moving equipment. There were no other witnesses to the incident. Neither the existence of the controlling rule, its widespread publication, Claimant's familiarity with it nor his level of training is challenged.


Based upon evidence adduced at the formal hearing held on May 1, 2000, Terminal Manager Brown assessed the penalty here under consideration. His letter of May 11, 2000 in that regard in part assesses a 3-day actual suspension to be served on May 1, 12 and 13. Claimant was, however, in attendance at his investigation on May 1. In recognition of the conflict between that timing and the terms of Rule 67 – Investigations requiring suspensions to become effective only after notice of decision to the employee, Claimant accordingly suffered a loss of pay for only May 12 and 13.

By his own admission, both at the scene and during his formal investigation, Claimant's action on April 24, 2000, in getting off moving equipment constituted a serious rule violation for which the Level S suspension imposed was in accord with Carrier policy, not offensive to the Agreement and not unreasonable.

Although the violation charged has been proved and no abuse of discretion is established on this record with respect to the level of discipline assessed, as the UTU notes in its appeal, Carrier's notice of discipline, issued by Certified Mail on May 11, 2000, was not in technical compliance with Rule 67. Carrier is therefore directed to remove it from Claimant's personnel records and make him whole for the loss of pay incurred for May 12, and 13, 2000.

### A W A R D

The Claim is sustained in accordance with the Findings.

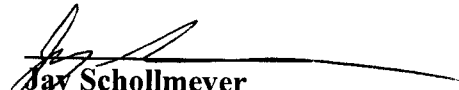
  
James E. Conway  
Chairman and Neutral Member

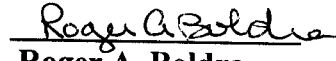
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<sup>1</sup> Rule S-13.5 reads: "Do not get on or off moving equipment, except in an emergency to avoid injury."

**OPINION AND AWARD**

**Public Law Board No. 6672 – Case No. 33**

  
**Jay Schollmeyer**  
**Employee Member**

  
**Roger A. Boldra**  
**Carrier Member**

**Dated: December , 2008**  
**Great Falls, VA**