

PUBLIC LAW BOARD NO. 3241

In the Matter of:	)	National Mediation Board
	)	Administrator
BROTHERHOOD OF MAINTENANCE	)	
OF WAY EMPLOYES,	)	
	)	
Organization,	)	
	)	
and	)	
	)	
UNION PACIFIC RAILROAD	)	Case No. 12
COMPANY,	)	Award No. 12
	)	
Carrier.	)	

Hearing Date: March 18, 1986  
Hearing Location: Sacramento, California  
Date of Award: November 9, 1987

MEMBERS OF THE BOARD

Employees' Member: Mr. C. F. Foose  
Carrier Member: Mr. E. R. Meyers  
Neutral Member: Mr. John B. LaRocco

STATEMENT OF THE CLAIM

1. That the Carrier violated the provisions of the current Agreement when it dismissed Tamper Operator Mr. G. L. Smith on the basis of unproven charges, said action being arbitrary, capricious and in abuse of discretion.

2. The Carrier shall now be required to return Claimant to his former position as Tamper Operator with seniority and all other rights restored unimpaired and with compensation for all wage loss suffered.

OPINION OF THE BOARD

This Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act as amended; that this Board has jurisdiction over the parties and the subject matter of the dispute herein; that this Board is duly constituted by an Agreement dated July 23, 1982; and that all parties were given due notice of the hearing held on this matter.

Claimant served two separate stints of employment under the Maintenance of Way Agreement covering employees on the pre-merger Union Pacific Railroad. Claimant's employment relation with the Union Pacific ended when he failed to respond to a September 3, 1983 recall notice. On October 30, 1984, the Carrier re-hired Claimant as a Track Machine Operator on the former Western Pacific territory.

Normally, Claimant operated a tamping machine on Extra Gang 8801 but on November 28, 1984, his machine was down. Therefore, the Assistant Steel Gang Supervisor instructed Claimant to board a bus to travel to another location where Claimant was to set spikes. Claimant did not board the bus. Instead, he proceeded to his tamping machine. The Assistant Steel Gang Supervisor accompanied by the Steel Gang Foreman drove their truck to Claimant's tamping machine. The Assistant Steel Gang Supervisor twice told Claimant to get on the bus. Claimant refused.

Later, Claimant flagged down the General Roadmaster as he was heading for the gang cars at Sano, Nevada. Claimant informed the General Roadmaster that he had disobeyed the Steel Supervisor's order. Claimant complained to the General Roadmaster that the Steel Gang Supervisor was harassing Claimant by assigning him to perform Laborers' work.

At a December 17, 1984 investigation held to determine if Claimant failed to comply with instructions, Claimant candidly conceded that he refused to board the bus when ordered. Claimant explained that he declined to set pins because he preferred to help a mechanic fix the tamping machine. Claimant contends that the Supervisor singled him out to set pins while in the past, Track Machine Operators remained with their machine and assisted the Roadway Mechanic in effectuating necessary repairs. Claimant also alluded to a rumor circulating among gang members that the Steel Gang Supervisor was deliberately harassing Track Machine Operators.

By notice dated December 27, 1984, the Carrier discharged Claimant from service.

At the onset, the Board recognizes that the Carrier could have summarily terminated Claimant in accord with Rule 47 of the applicable Agreement inasmuch as Claimant's employment application had not been accepted and Claimant had not completed the sixty day probationary period. Nonetheless, once the Carrier decided to bring formal charges against Claimant, it assumed the burden of proving that Claimant committed the charged offense and became bound by Rule 20.

Claimant, the Assistant Steel Gang Supervisor and the Steel Gang Foreman all concurred that the Steel Gang Supervisor gave Claimant at least three direct orders to board the bus so Claimant could be transported to another location to perform spike setting duties. Similarly, all three witnesses acknowledged that Claimant not only verbally refused to comply

with the orders but also Claimant, in fact, did not board the bus. Claimant urges this Board to excuse his disobedience because he should have been allowed to work on his broken tamping machine and the Steel Gang Supervisor was harassing him. However, these explanations are insufficient to exonerate Claimant of insubordination. To prevent anarchy on the railroad, employees are obligated to comply with supervisory directives. If an employee believes a Supervisor issued an unreasonable order, the worker must obey the order and then later file a grievance to redress any Carrier violation of the applicable Agreement. Public Law Board No. 403, Award No. 2 (Hanlon). Otherwise, employees would be constantly questioning and challenging their supervisors' orders which would completely disrupt railroad operations. If Claimant believed that he had a contractual right to work on his tamping machine or that the Steel Gang Supervisor was harassing him, Claimant should have boarded the bus and filed a claim. Assuming Claimant's gripes were meritorious, he would have been made whole for any Carrier violation of the Agreement.

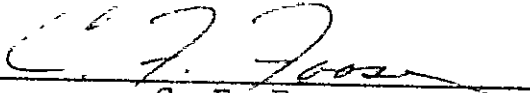
Therefore, the Carrier presented substantial evidence proving that Claimant violated General Rule 700.

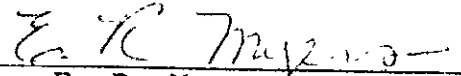
Insubordination is a grave offense. NRAB Second Division Award No. 8781 (Dennis). Due to Claimant's short tenure, this Board must affirm the assessed discipline.

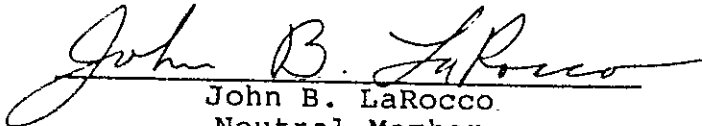
AWARD AND ORDER

Claim denied.

DATED: November 9, 1987

  
C. F. Foose  
Employees' Member

  
E. R. Meyers  
Carrier Member

  
John B. LaRocco  
Neutral Member