

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. 15
COMPANY,)	Award No. 15
)	
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's decision to suspend Claimant M. L. McCabe for a period of fifteen (15) days was without just and sufficient clause and in violation of the current Agreement.

2. The Carrier shall now be required to compensate Claimant for all wage loss suffered and his record be cleared of all charges.

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.

The Carrier withheld Claimant, a Track Laborer, from service pending an investigation to determine if he was insubordinate on March 27, 1985.

At the onset, the Organization argues that Claimant was deprived of his contractual due process rights because Claimant did not receive written notice of the April 1, 1985 hearing and he lacked sufficient time to notify fellow workers to attend the hearing at witnesses on Claimant's behalf. We must overrule the Organization's procedural objections. First, the record reflects that when the General Roadmaster pulled Claimant out of service on March 27, 1985, he verbally informed Claimant that the investigation would convene on April 1, 1985. The Carrier sent proper written notice to Claimant's residence but Claimant did not personally receive the notice because he was absent from his home. Moreover, Claimant and his representative appeared at the hearing. Thus, the Carrier complied with the Rule 20 notice provisions. Second, during the five days between the date of the alleged offense and the investigation, Claimant did not exert any effort to contact his witnesses. At the commencement of the investigation, the Hearing Officer offered to recess the hearing so Claimant could procure any necessary witnesses but Claimant emphatically elected to continue with the hearing. In addition,

Claimant neither identified his potential witnesses nor specified why their testimony would be pertinent to the incident under investigation. Under the particular facts of this case, we conclude that the Carrier gave Claimant a "...reasonable opportunity to secure the presence of necessary witnesses..." within the meaning of Rule 20.

At the investigation, the Foreman of Curve Gang No. 9865 related that he observed Claimant slowly carrying one tie plate at a time along the track. He told Claimant to walk faster and to carry two plates like the other gang members. The Foreman reiterated his instructions several times and Claimant grudgingly complied but only for a short time. On four trips, Claimant carried two tie plates without any apparent difficulty. Then, Claimant told his Foreman that he could no longer carry more than one tie plate per trip because of a rope burn on the top of his finger. Similarly, Claimant conveyed to the Track Supervisor that he was not going to carry two plates due to his sore finger. Each tie plate weighed approximately thirty pounds.

Claimant declared that under normal circumstances he could easily lift and carry sixty pounds. However, on March 27, 1985, carrying two plates caused pain in his finger. Claimant was fearful of aggravating his injury. Claimant denied that he deliberately slowed down on the job. He explained that wet, snowy ground conditions made walking treacherous.

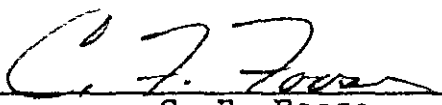
Following the investigation, the Carrier suspended Claimant from service for fifteen calendar days including the time he spent out of service pending the investigation.

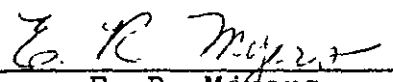
The record reflects that the Foreman gave Claimant a direct order to carry two tie plates on each trip down the track. Claimant refused because his sore finger purportedly prevented him from performing the assigned task. However, an employee is obligated to follow his supervisor's instructions unless performing the order would place the employee in imminent danger of bodily harm. From the evidence in this record, we do not find sufficient evidence that the order imperiled Claimant's safety and health. On the contrary, Claimant carried two tie plates on several trips without any apparent adverse consequences. Moreover, Claimant could have carried the plates in a fashion so that they would not come in contact with his sore finger. Therefore, Claimant's minor injury hardly impaired him from obeying his Foreman's directive.

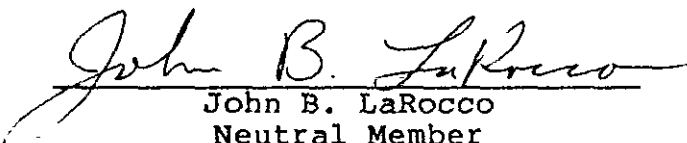
AWARD AND ORDER

Claim denied.

DATED: November 9, 1987


C. F. Foose
Employees' Member


E. R. Meyers
Carrier Member


John B. LaRocco
Neutral Member