

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. 16
COMPANY,)	Award No. 16
)	
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 on March 7, 1985 it assessed Mr. C. J. Fawson's personal record with fifteen (15) demerits.

2. That the Carrier will now be required to remove the demerits from Claimant's record and clear his record of all reference thereto.

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, a Division Welder, and his Helper were co-principals at a February 28, 1985 investigation. Following the investigation, the Carrier assessed fifteen demerits on the personal records of Claimant and his Helper. Both workers appealed the discipline. We will address the Helper's claim in Case No. 17.

In early February, 1985, Claimant and his Helper were temporarily residing in a Carrier trailer at Wendover, Utah. On Friday, February 8, 1985, they were working with a Welding Gang near Marblehead which was east of Wendover and close to Claimant's headquarters and home. Thus, both Claimant and his Helper intended to spend the weekend at their homes instead of returning to the Wendover trailer. Shortly after noon on February 8, 1985, the Roadmaster asked Claimant and his Helper if they had drained the pipes in the trailer before leaving it. They responded negatively. At this point, the Roadmaster's testimony conflicted with the rendition given by Claimant and his Helper. The Roadmaster declared that he clearly informed the two workers that water would have to be drained from the trailer pipes before the weekend even if it meant that they had to return to Wendover. According to the Roadmaster, Claimant and his Helper assured him that they would take care of the pipes. On

the other hand, Claimant and his Helper asserted that while the Foreman said the pipes should be drained, he never specifically instructed them to return to Wendover to drain the plumbing. Claimant and his Helper decided to ask a fellow employee, who lived in Wendover and had a key to the trailer, to drain the pipes. Claimant wished that the Roadmaster had told them about draining the pipes sooner instead of near the end of the work week when they were preparing to enjoy the weekend.

Claimant testified that he unsuccessfully tried once on Saturday morning to contact the fellow employee in Wendover. Claimant was unconcerned because he doubted that the trailer would freeze since the heater was working and he intended to return to the trailer on Monday. Nonetheless, Claimant admitted that he was partially responsible for damage to the trailer plumbing. The Helper tried twice on Friday and Saturday to contact the Wendover employee but his attempts also were fruitless.

On Monday, February 11, 1985, the Roadmaster learned that the piping in the trailer had frozen. A water service maintainer had to be called to repair two split pipes and replace a fitting.

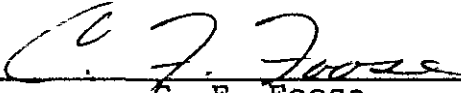
This Board concludes that the Carrier presented substantial evidence showing that Claimants were derelict in carrying out the Roadmaster's express instruction to make certain that the pipes in the trailer were properly drained. It is not the province of this Board to resolve credibility issues or to pass on conflicts in testimony and thus the Hearing Officer could reasonably credit the Roadmaster's testimony (which was corroborated by a Welding

Supervisor) as opposed to Claimant's rather vague testimony concerning the absence of a specific instruction. Moreover, the record shows that the Roadmaster clearly communicated to Claimant that a task needed to be completed but he gave Claimant substantial discretion on how to accomplish the assigned task. While the Roadmaster endorsed the idea of contacting the fellow employee who lived in Wendover, he did not relieve Claimant and his Helper of the ultimate responsibility for draining the trailer pipes. When Claimants were unable to contact the Wendover employee, they should have gone to Wendover and drained the pipes or contacted the Roadmaster to discuss alternative solutions.

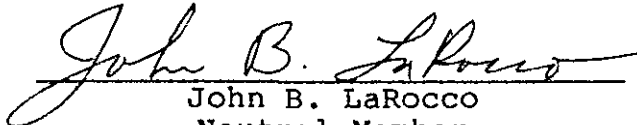
AWARD AND ORDER

Claim denied.

DATED: November 9, 1987


C. F. Foose
Employees' Member


E. R. Meyers
Carrier Member


John B. LaRocco
Neutral Member