

PUBLIC LAW BOARD NO. 3241

In the Matter of:)	
)	
BROTHERHOOD OF MAINTENANCE)	National Mediation Board
OF WAY EMPLOYES,)	Administrator
)	
Organization,)	
)	
and)	
)	Case No. 19
UNION PACIFIC RAILROAD)	Award No. 19
COMPANY,)	
)	
Carrier.)	

Hearing Date: April 28, 1987
Hearing Location: Sacramento, California
Date of Award: September 28, 1988

MEMBERS OF THE BOARD

Employees' Member: C. F. Foose
Carrier's Member: J. J. Shannon
Neutral Member: John B. LaRocco

STATEMENT OF THE CLAIM

- "1. The Carrier violated the provisions of the current agreement when it dismissed Track Laborer K. D. Stephens without just and sufficient cause.
- "2. That Claimant be reinstated to his former position with seniority and all other rights restored unimpaired and compensation for all wage loss suffered during the intervening period."

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.

I. BACKGROUND AND SUMMARY OF THE FACTS

On Monday morning, May 13, 1985, the Foreman of Extra Gang 8900 discovered that, sometime during the weekend, someone had stolen a battery from an air compressor situated on a spur track at Phillips, California. A resident of Elk Grove, California informed the Foreman that, on the previous Friday, he had observed a black male carrying a battery from the Carrier's tracks to a red van. Before the man departed the scene, the citizen recorded the van license number which he gave to the Foreman. Word spread quickly throughout the gang that the Carrier had the license number and description of the vehicle involved in the air compressor battery theft. Before the Carrier ascertained the identity of the registered owner of the red van, Claimant, a Track Laborer, stepped forward and told the Foreman and the Roadmaster that he had taken the battery. The Roadmaster instructed Claimant to return the battery the next day. Claimant complied.

Pursuant to proper notice, the Carrier convened an investigation on May 28, 1985 to determine if Claimant removed company equipment from its property without authority. At the investigation, Claimant again admitted that he took the battery

without permission from proper authority. He declared that he was desperate. Claimant installed the battery in his van so he could drive to Sacramento to pick up his paycheck from a friend. (Claimant had recently transferred from Wells, Nevada to the extra gang. He had a friend bring his paycheck from Wells to Sacramento.) Claimant stated that he intended to return the battery on Monday morning but he drove a different vehicle to work.

Following the investigation, the Carrier dismissed Claimant from service.

II. DISCUSSION

The record contains not merely substantial, but overwhelming evidence that Claimant stole company property. His confessions, coupled with the observations of an objective, independent eyewitness, constitute conclusive proof that Claimant committed theft.

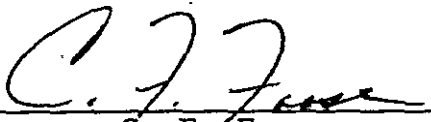
The next issue is whether the penalty of discharge was commensurate with the seriousness of the proven offense. The Organization argues that the discipline should be reduced because Claimant frankly admitted his misconduct, expressed contrition, cooperated with the Carrier, never intended to keep the battery, and was experiencing personal problems at home. However, the record shows that Claimant intended to permanently deprive the Carrier of its property. Claimant converted the battery to his own use when he installed it in his van. If Claimant had really intended to return the battery, he would have done so on the next

workday. Moreover, Claimant only cooperated with the Carrier once he realized that his capture was imminent. Claimant admitted taking the battery only after he was aware that the Carrier was close to discovering the thief's identity. Also, an employee's personal problems do not excuse larceny. Many workers cope with their family problems without resorting to theft. Claimant had accumulated approximately six years of seniority but his length of service is an insufficient justification for reducing the penalty in view of his clear intent to permanently deprive the Carrier of its personal property. Dishonesty is a serious offense warranting a severe punishment.

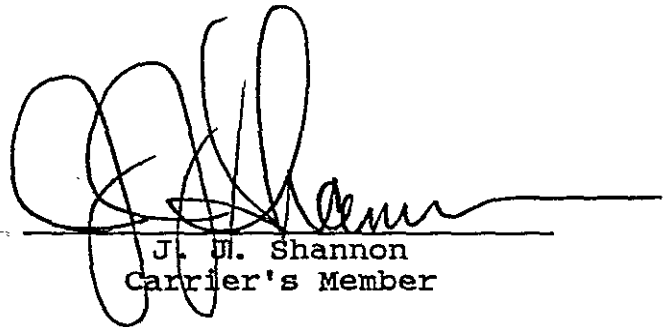
AWARD AND ORDER

Claim denied.

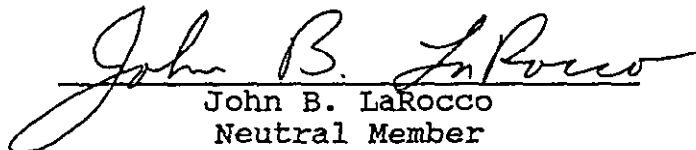
Dated: September 28, 1988



C. F. Foose
Employees' Member



J. M. Shannon
Carrier's Member



John B. LaRocco
Neutral Member