

PUBLIC LAW BOARD NO. 3241

In the Matter of:

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES,

Organization,

and

UNION PACIFIC RAILROAD
COMPANY,

Carrier.

)
)
) National Mediation Board
) Administrator
)

)
) Case No. 20
) Award No. 20
)
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)

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

MEMBERS OF THE BOARD

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

STATEMENT OF THE CLAIM

- "1. That the Carrier's decision to suspend Track Laborer C. F. Tademy from his position for a period of seven (7) days was in violation of the agreement and abuse of discretion.
- "2. Claimant's record shall now be cleared of all charges and he shall be compensated for all wage suffered during the seven (7) day 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.

By notice dated January 17, 1985, the Carrier charged Claimant, a Laborer on Extra Gang 8821, with failing to promptly report an on-duty injury which he allegedly suffered on June 11, 1985. The following facts were adduced at a June 21, 1985 investigation.

Claimant allegedly hit himself in the knee with a spike maul at 10:00 a.m. on June 11, 1985 while the gang was performing track work near Reno, Nevada. Claimant testified that his knee hurt only for a moment. However, he began to experience pain in his leg two days later. Despite the pain, Claimant continued working. Claimant, the Gang Foreman, and the Assistant Gang Foreman concur that Claimant did not report the alleged injury on June 11, 12, or 13, 1985. On June 14, 1985, Claimant asked the Foreman for the location of the Veterans' Hospital. He told the Foreman that he had injured his knee three days previously and wanted to obtain some medication. The Foreman told Claimant that if he had incurred an on-duty injury, he should fill out the appropriate form. Contending that it was minor, Claimant resisted reporting the injury. He said it was unnecessary to fill out the paperwork. While the record is unclear, a physician apparently examined

Claimant and he prescribed a drug for treatment. Claimant did not lose any workdays.

Carrier Rule 4004 requires employees to notify proper authority of any injury suffered while on duty or on company property and to make a written report on the prescribed form as soon as feasible. Employees have a duty to immediately report any on-duty injuries if they are physically able to do so. Prompt reporting of on-duty injuries is essential so the Carrier can correct any hazardous situation, thoroughly investigate the circumstances surrounding the injury, limit its legal liability, and, most importantly, provide the injured worker with the necessary medical treatment. Public Law Board No. 3241, Award No. 14.

Claimant's sole excuse for not reporting the injury in this case is that he thought that it was minor. To support his assertion, Claimant points out that he did not lose any work time due to the mishap. However, the record reflects that the injury was far more serious than a minor scrape. Claimant's contention that the injury was minor is inconsistent with his later assertion that medical treatment was necessary. Evidently, Claimant simply wanted to avoid the burden of filling out a form. Claimant evaded his obligation to make a written report of his injury, even after his Foreman urged him to fill out the appropriate form. Claimant had been injured in the past while working for the Carrier, and, so, he was well aware of the mandatory procedures for reporting all

on-duty injuries. Therefore, the Carrier presented substantial evidence proving that Claimant committed the charged offense.


During his short two-year tenure of service with the Carrier, Claimant compiled a poor work record. Thus, this Board finds no reason to adjust the seven-calendar-day suspension.


Prior to the June 21, 1985 hearing, the Carrier offered Claimant a seven-day suspnsion if he agreed to waive the investigation. Claimant rejected the offer. After finding Claimant guilty, the Carrier assessed Claimant with the same penalty he would have received had he waived his contractual due process right. While this Board affirms the seven-day suspension, nothing in our Opinion should be construed to undermine our decision in Award No. 13.

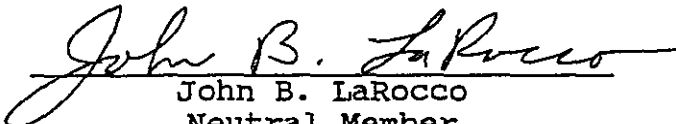
AWARD AND ORDER

Claim denied.

Dated: September 28, 1988


C. F. Foose
Employees' Member


J. J. Shannon
Carrier's Member


John B. LaRocco
Neutral Member