

PUBLIC LAW BOARD NO. 3241

In the Matter of:)	
)	
BROTHERHOOD OF MAINTENANCE)	National Mediation Board
OF WAY EMPLOYES,)	Administrator
)	
Organization,)	
)	
and)	
)	Case No. 23
UNION PACIFIC RAILROAD)	Award No. 23
COMPANY,)	
)	
Carrier.)	

Hearing Date: April 28, 1977
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. The Carrier's decision of November 19, 1985 to suspend Assistant Track Gang Laborer Mr. E. T. Malzahn from its services for a period of thirty (30) working days was in violation of the provisions of the current Agreement.
- "2. The Carrier will now be required to compensate Claimant for all wage loss suffered beginning on December 9, 1985 through and including January 16, 1986."

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

In an investigation notice dated September 26, 1985, the Carrier charged Claimant, who was a Track Laborer on System Curve Gang No. 8865, with three separate infractions. First, Claimant allegedly failed to fill out Form 2611-R regarding a personal injury he suffered near Merlin, California at 12:30 p.m. on September 25, 1985. Second, Claimant ostensibly became quarrelsome with the Track Supervisor on September 25, 1985. Third, Claimant was purportedly absent without permission on September 26, 1985. By another written notice issued on October 3, 1985, the Carrier charged Claimant with an unauthorized absence on September 27, 1985. The last charge was consolidated with the three previous charges.

At an investigation held on October 18, 1985, the Track Supervisor related the relevant events which occurred on September 25, 1985. Midway through his tour of duty, Claimant incurred an injury while operating the spike puller. Claimant wanted medical treatment, and so the Track Supervisor transported him to an Oroville hospital. According to the hospital report, Claimant pulled a tendon in his left leg. The emergency room physician

released Claimant to return to work subject to a fifty-pound lifting restriction for the next two days. After the two days, Claimant could resume performing the full range of his Laborer duties. When Claimant and the Track Supervisor returned to the job site, they had a discussion with the Engineer who oversees track maintenance on the Carrier's system from Salt Lake City to Oakland. Since the Engineer was not present at the October 18, 1985 hearing, the hearing officer prudently recessed the hearing to obtain testimony from an essential witness.

Although Claimant was properly notified that the hearing would continue on November 4, 1985, Claimant failed to appear for the second day of hearing. When the investigation resumed, the Engineer testified that he directed Claimant to fill out a personal injury report when he returned from the hospital. Claimant refused. The Engineer also instructed Claimant to report to work the next day because the physician had cleared him to perform light duty. When the Engineer explained the Carrier's light duty program to Claimant, Claimant was uncooperative and abusive. According to the Gang Timekeeper, Claimant called the Engineer and Track Supervisor abusive and profane names. Also, Claimant disagreed with the physician's opinion. However, when the Engineer offered Claimant the chance to seek a second medical opinion, Claimant demurred.

Claimant neither reported to duty on September 26 and 27, 1985 nor contacted the Carrier to mark off absent.

Following the investigation, the Carrier suspended Claimant from service for thirty workdays running from the period December 9, 1985 through January 16, 1986.

II. DISCUSSION

The Carrier presented substantial, unrefuted evidence proving that Claimant committed all four offenses.

If Claimant did not want to participate in the Carrier's light duty program, he should have, at the very least, contacted the Carrier to report his absence.

Claimant's blatant failure to complete a personal injury report demonstrates that he had a total disregard for authority, as well as for the Carrier safety rules. The Track Supervisor and the Engineer did not require Claimant to complete the report until after he had received the necessary medical treatment. Since Claimant did not appear at the continuation of the investigation on November 4, 1985, the record does not contain any explanation for his outright refusal to fill out a personal injury report. Even after Claimant returned to work, he declined to sign a personal injury form completed by the Timekeeper and the Track Supervisor. Clearly, Claimant breached the Carrier's safety rules.

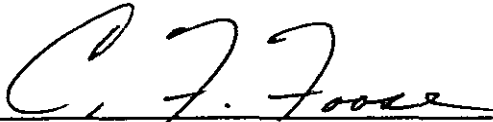
Finally, Claimant became abusive toward the Engineer when the Engineer was simply trying to tell Claimant about the light duty program. Claimant's extreme reaction further manifests his defiance of proper authority.

We do not find any justification for reducing the assessed disciplinary penalty.

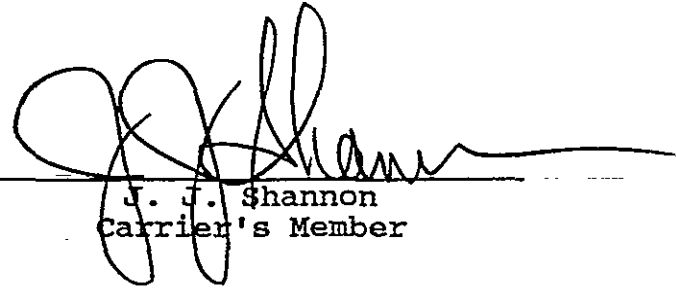
AWARD AND ORDER

Claim denied.

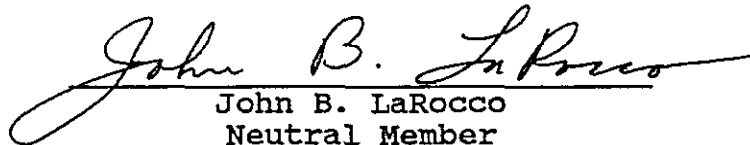
Dated: September 28, 1988



C. F. Foose
Employees' Member



J. J. Shannon
Carrier's Member



John B. LaRocco
Neutral Member