

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. 3 |
| COMPANY, |) | Award No. 3 |
| |) | |
| Carrier. |) | |

Date of Hearing: March 7, 1985
Place of Hearing: Sacramento, California
Date of Award: January 8, 1986

MEMBERS OF THE BOARD

Employes' Member: Mr. C. F. Foose
Carrier Member: Mr. E. R. Meyers
Neutral Member: Mr. John B. LaRocco

STATEMENT OF THE CLAIM

The suspension of Track Laborer F. V. Ayala for a six-month period from July 27, 1983, through January 27, 1984, was without just and sufficient cause, excessive, unduly harsh, an abuse of discretion, and in violation of the Agreement.

That the Carrier be required to compensate Mr. F. V. Ayala for all time lost and expunge the charge from his record.

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 January 25, 1983, Claimant, a Section Laborer on Gang 114, was working with a large contingent of Maintenance of Way Workers who were dumping ballast on the salt flats. There were two foremen at the job site. Foreman Thompson gave Claimant the keys to the gang's truck and directed Claimant to follow the work train west to the next work location. While Claimant was waiting by the truck for the train to move, Foreman Boggs instructed Claimant to assist other gang members in preparing the train for unloading the ballast. Claimant went to Foreman Thompson who told Claimant to keep the keys and drive the truck after he complied with Foreman Boggs' instructions. Another Laborer, who witnessed the incident, confirmed that Foreman Thompson informed Claimant that Foreman Boggs was in charge. Claimant returned to the truck. When Foreman Boggs again directed Claimant to help the men open the train, Claimant refused to comply. Both foremen approached Claimant and Foreman Boggs repeated his order several times. Claimant remained by the truck. Foreman Boggs reiterated the order one more time and warned Claimant that he would have to go home if he failed to comply. Claimant refused to obey. A short while later, he was transported to his home. Claimant worked the following day but commencing on January 27, 1983, the

III. DISCUSSION

Under the circumstances in this case, the Carrier properly exercised its discretion under Rule 20 to withhold Claimant from service pending the investigation. However, withholding Claimant from service did not raise any presumption that he committed the charged offense. The Carrier retains the burden of proving that Claimant committed insubordination.

Initially, Foreman Boggs' order was inconsistent with the instructions Claimant had previously received from Foreman Thompson. Not knowing which order should take priority, Claimant properly returned to Foreman Thompson for guidance and clarification. The inconsistency was resolved when Foreman Thompson told Claimant that Foreman Boggs was in charge. Nonetheless, Claimant returned to the truck. Instead, he should have complied with Foreman Boggs' instructions and then moved the truck in accord with Foreman Thompson's order. Even if Claimant was still genuinely confused, any doubt was removed when both foremen approached Claimant and Foreman Boggs unequivocally directed Claimant to assist his fellow workers. Despite receiving repeated orders, Claimant steadfastly refused to comply. Moreover, Claimant became argumentative towards the foremen. Claimant had a sufficient understanding of the English language to realize that he was given a direct order.

Contrary to the Organization's arguments, Claimant was not given an option to go home. Rather, Foreman Boggs warned Claimant that his refusal to comply with his order would leave

Roadmaster withheld Claimant from service pending an investigation.

The Carrier convened an investigation on August 2, 1983, to determine if Claimant committed insubordination. Following the investigation, Carrier suspended Claimant from service for six months and credited him with the time he had been out of service pending the results of the disciplinary investigation.

II. THE POSITIONS OF THE PARTIES

The Carrier contends that Claimant was both insubordinate and quarrelsome. The two foremen unequivocally testified that in spite of receiving direct orders to assist the gang members, Claimant stubbornly refused to comply. Failure to perform work when ordered is a serious offense which justified withholding Claimant from service. Inasmuch as Claimant's record revealed that Claimant had committed insubordination in the past, a lengthy suspension was the appropriate penalty.

The Organization argues that Claimant was confronted with two contradictory orders. He was sincerely confused regarding which order should take precedence. It was impossible for him to satisfy two masters. Perhaps, Claimant's limited capacity to speak and comprehend English contributed to his confusion. Moreover, Foreman Boggs gave Claimant two mutually exclusive options: obey the order or go home. Claimant indirectly complied with Foreman Boggs' directive by choosing to go home.

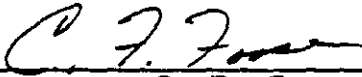
the foreman no choice but to send Claimant home. Going home was the immediate consequence of the insubordinate act.

Based on his prior work record, we find no justification for reducing the assessed penalty.

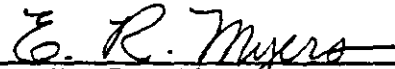
AWARD AND ORDER

Claim denied.

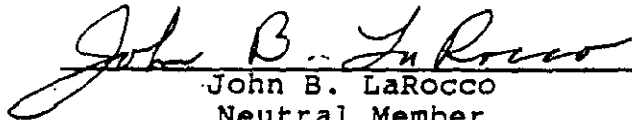
DATED: January 8, 1986



C. F. Foose
Employees' Member



E. R. Meyers
Carrier Member



John B. LaRocco
Neutral Member