

PUBLIC LAW BOARD NO. 4338

PARTIES) UNION PACIFIC RAILROAD COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: Claim that the discipline of 45 days suspension imposed on System Gang Laborer J. J. Ramey for the alleged violation of Rules A, D, I, 600, 607, and 4000 was arbitrary, capricious and unwarranted on the basis of unproven charges and in violation of the Agreement. That claimant's record shall be cleared of the discipline and he shall be compensated for all time lost.

FINDINGS: This Public Law Board No. 4338 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was notified to attend an investigation at La Grande, Oregon on September 29, 1986 to determine his responsibility for his alleged failure to comply with verbal instructions of Assistant Foreman C. Torres, reference dressing track on September 4, 1986 at approximately 11:20 a.m. at MP 358.50 indicating a violation of General Rules A, D, and I and Rules 600, 604 and 607, and Safety Instructions General Rule 4000 of Form 7908, Safety, Radio and General Rules for All Employees. Pursuant to the investigation the claimant was found guilty and was assessed 45 days suspension.

The Union objects to the charge letter of September 10, 1986 on the basis that it is vague and ambiguous. The Board has examined the charge letter and finds it contains adequate information for the claimant and his representative to be well aware of the specific charges.

Track Supervisor D. O. Humphreys testified that on September 4, 1986 at approximately 11:20 a.m. Carlos Torres called him on the radio and stated he was having a problem with one of his laborers. He testified that he found Assistant Foreman Torres in the neighborhood of MP 358.75, and he instructed Mr. Torres to see if he could locate the claimant.

Supervisor Humphreys testified that shortly thereafter Mr. Torres returned with the claimant, and he asked the claimant if he had understood the instructions given to him, and the claimant replied in the affirmative, and when asked why he did not comply with the instructions, the claimant stated that he didn't feel he could do it, so he went to find something he could do. Mr. Humphreys then testified that at that time he suspended the claimant from service pending an investigation.

Mr. Humphreys also testified that Assistant Foreman Torres had instructed the claimant to go to MP 358.50 and he found claimant at MP 357.90.

Assistant Foreman Torres testified that after lunch he approached the claimant and explained what he wanted him to do, that he was to clean, dress up car setoff, motor car setoff, dress ballast. Mr. Torres testified that he asked the claimant to acknowledge the order because he had a problem with the claimant not hearing. He stated that the claimant acknowledged that he understood.

Witness Torres then testified that he went around the curve to check on another group, and the claimant was not dressing the motorcar setoff but was farther down the track. He testified he walked down the track to where the claimant was and found him at some signal lights, but he did not know what the claimant was doing, that he couldn't tell from a distance what the claimant was doing. He stated that when he got up close it didn't look like there was much done down there at all.

When questioned as to the claimant's response as to why he was not where he was told to go, Mr. Torres testified that claimant gave no reason at all. He did state that the claimant told Mr. Humphreys that he didn't think he could handle the job of dressing the motor setoff. Foreman Torres also testified that he had previously had the claimant clean a motorcar setoff.

Randy Lee Treanor, a Laborer, testified that he heard the conversation between the claimant and Foreman Torres at approximately 11:20 a.m. on the date in question. He testified that he saw Mr. Torres walk up to the claimant and heard him tell the claimant to grab a shovel and go up to the half pole and dress the motorcar setoff.

Witness Treanor then testified that the claimant grabbed a shovel and proceeded up to the motorcar setoff, then stood there looking at it, turned up the track, turned back and looked at the motorcar setoff, and then proceeded to walk up the track. He stated he did not see the claimant do any work around the motorcar setoff.

This witness further testified that Mr. Torres asked him why the claimant wasn't dressing the setoff, and he replied that he had no idea, that the claimant had just proceeded up the track. He further testified that it would take him fifteen minutes to half an hour to clean off the motorcar setoff by himself.

The claimant contended that he believed that Foreman Torres was not familiar with the conditions of the setoff in that there was a tie which he would have to move by himself. He said that he believed this would be an unsafe action for him, and consequently he did not perform the service as directed.

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Award No. 9

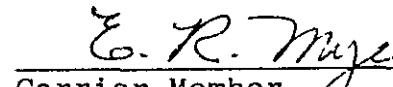
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The Board has reviewed all of the evidence of record and finds that the evidence is sufficient for the Carrier to find the claimant guilty as charged. Under the circumstances there is no justification to set the discipline aside.

AWARD: Claim denied.


Preston J. Moore, Chairman


Union Member


Carrier Member

Dated: November 10, 1987