

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. 21
) Award No. 21
)
)
)

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 assess Extra Gang Laborer J. C. Masterson's personal record with forty-five (45) demerits was in violation of the agreement and in abuse of discretion.
- "2. That the forty-five (45) demerits will now be removed and Claimant's record will be cleared of all charges with no references made thereto in the future."

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.

The Carrier charged Claimant with committing insubordination and it convened an investigation on August 8, 1985.

The Assistant Foreman of Track, Surface and Lining System Gang No. 9821 instructed Claimant, a Laborer, to hand tamp underneath the raised switch at Sage, Nevada on July 24, 1985. Claimant was reluctant to shovel ballast underneath the switch. Claimant complained that the job could be accomplished with machinery. A Tamper Operator confirmed that Claimant was working very slowly, if at all, and appeared to be loafing most of the day. Claimant testified that he did everything he was told. He maintained a steady work pace.

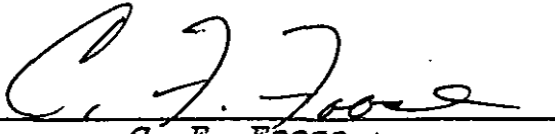
In spite of Claimant's denials, the record contains substantial evidence that Claimant did not promptly obey the Assistant Foreman's instructions. Claimant did just complain about his work assignment but he defied his Foreman's authority and refused to perform as instructed. A fellow worker corroborated the Assistant Foreman's testimony that Claimant was working unreasonably slowly on July 24, 1985. Claimant was obligated to execute his assigned duties even if some of those work tasks were undesirable.

In view of the seriousness of the offense, the Carrier's assessment of forty-five demerits was reasonable.

AWARD AND ORDER

Claim denied.

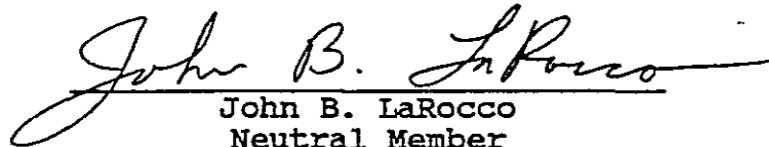
Dated: September 28, 1988



C. F. Foose
Employees' Member



J. J. Shannon
Carrier's Member



John B. LaRocco
Neutral Member