

PUBLIC LAW BOARD NO. 3241

In the Matter of:	)	National Mediation Board
	)	Administrator
BROTHERHOOD OF MAINTENANCE OF	)	
WAY EMPLOYES,	)	
	)	
Organization,	)	
	)	
and	)	Case No. 35
	)	Award No. 35
UNION PACIFIC RAILROAD	)	
COMPANY,	)	
	)	
Carrier.	)	
	)	
	)	

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Hearing Date: January 26, 1989  
Hearing Location: Sacramento, California  
Date of Award: December 13, 1989

MEMBERS OF THE COMMITTEE

Employes' Member: C. F. Foose  
Carrier Member: L. E. Smith  
Neutral Member: John B. LaRocco

ORGANIZATION'S STATEMENT OF THE CLAIM

1. That the Carrier violated the current Agreement when it dismissed Track Laborer A. H. Stapp. Said action being excessive, unduly harsh and in abuse of discretion.
2. That the Carrier reinstate Claimant to his former Carrier position with seniority and all other rights restored unimpaired with pay for all loss of earnings suffered, and his record cleared of all charges.

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.

On December 12, 1986, the Carrier convened an investigation to determine if Claimant committed insubordination and violated the proper attire rule (No. 4010) on December 4, 1986. The facts adduced at the investigation were, for the most part, undisputed.

In early December, 1986, Claimant was assigned as a Laborer on Curb Relay Gang 8861. At the time, the gang was performing maintenance of way work in California's Feather River Canyon. During the early morning briefing on December 3, 1986, the Gang Foreman directed gang members not to wear red clothing while on Carrier property. At a safety meeting held after work that evening, the Foreman and the District Roadmaster reiterated the instruction that the gang members were forbidden to wear red attire while on duty and on Carrier property. The Roadmaster told Claimant that an engineer might perceive a red article of clothing as a stop signal when he came around one of the sharp curves prevalent in the Feather River Canyon. If the engineer placed the train into emergency, a derailment could occur. At the safety meeting, Claimant boldly asserted that he would continue to wear red garments on the job.

The next day, Claimant wore a red jacket, a red T-shirt and a red bandana while working at milepost 254.75. At 1:30 p.m.,

the Roadmaster ordered Claimant to either cover up or remove the red garments. Claimant refused to comply with the order. Claimant responded that he wanted to see a written rule prohibiting gang members from wearing red clothes. Before reiterating his order, the Roadmaster told Claimant that if he continued to disobey, he would be removed from service. The Roadmaster testified that he even told Claimant that he would let him work the rest of the day in the red clothes if he promised not to wear red clothing in the future. Claimant refused to comply with the Roadmaster's order, persisting that he could wear red clothing on the job. The Roadmaster removed Claimant from service pending the December 12, 1986 investigation.

At the investigation, Claimant explained that he insisted on wearing red clothes so that he would be visible to machinery operators working in the area. In Claimant's view, it would have been unsafe for him to wear clothes having a less conspicuous color. He also related that the rule prohibiting red was not in the safety rule book. He said the rule was improperly invented by the Roadmaster and Gang Foreman. The Organization also submitted evidence that there were red drums in the vicinity which a train engineer could also misconstrue as a red signal. The Foreman countered that the red drums were stored well away from the track. Claimant and a machine operator related that other employees were permitted to wear red both before and after December 4, 1986.

By letter dated December 29, 1986, the Carrier notified Claimant that he was discharged from service.

Claimant admitted that he deliberately failed to comply with direct orders issued by the Roadmaster and the Gang Foreman. The supervisors gave Claimant several reasonable opportunities to obey their directives. The Roadmaster made a good faith effort to dissuade Claimant from his rash action. In spite of warnings that he would be severely disciplined for his disobedience, Claimant adamantly continued to disregard the orders.

Claimant raised several defenses for not complying with the orders but this Board is not empowered to inquire into the legitimacy of Claimant's explanations. When given a direct order, an employee is obligated to comply with the order even if he thinks that the order is unreasonable, not being uniformly applied or a violation of applicable Carrier rules. After complying with the order, the employee may use the contract claims process to redress any impropriety concerning the supervisor's instructions. Thus, an employee must "work now and grieve later," a universally recognized labor relations tenet. One exception to the "work now, grieve later" principle is that an employee need not comply with an order that places him in imminent harm of death or bodily injury. In this case, Claimant made no showing that wearing garments of colors other than red would subject him to immediate danger. Therefore, Claimant remained obligated to obey his supervisors' orders. If Claimant had complied with the Roadmaster's instructions, he could have filed a grievance contesting the propriety of the prohibition against wearing red clothes and raised his contention that supervisors singled him out for disparate treatment. However, as

stated above, these issues are not properly before the Board in this case because we are relegated to determining if the Carrier presented substantial evidence that Claimant committed insubordination. The Carrier met its burden of proof.

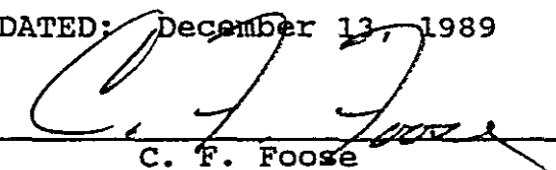
Insubordination is a serious offense, warranting a severe disciplinary penalty. If employees could blatantly disregard orders issued by their supervisors, anarchy would reign in the workplace. Given Claimant's deliberate disobedience, after being accorded several reasonable opportunities to comply with the orders, we must uphold the assessed discipline.

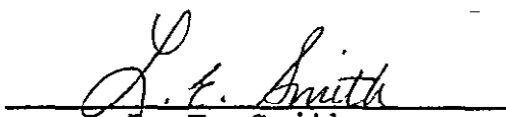
Inasmuch as this Board is denying this claim on its merits, we need not address or consider the Carrier's contention that the Organization neglected to appeal the Regional Engineer's declination within the time limits expressed in Rule 21(b).

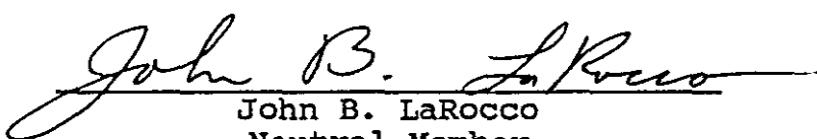
AWARD AND ORDER

Claim denied.

DATED: December 13, 1989

  
C. F. Foose  
Employees' Member

  
L. E. Smith  
Carrier Member

  
John B. LaRocco  
Neutral Member