

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. 56
COMPANY,	)	Award No. 56
	)	
Carrier.	)	
	)	

Hearing Date: March 9, 1994
Hearing Location: Sacramento, California
Date of Award: March 2, 1995

MEMBERS OF THE BOARD

Employees' Member: C. F. Foose
Carrier Member: D. A. Ring
Neutral Member: John B. LaRocco

ORGANIZATION'S STATEMENT OF THE CLAIM

1. That the Carrier violated the current Agreement when it suspended Welder J.R. Grant for five (5) days from August 16, 1993 to August 20, 1993. Said action being excessive, unduly harsh and in abuse of discretion.
2. That the Carrier reinstate Claimant to his former position with seniority and all other rights restored unimpaired with pay for all loss of earnings suffered, and his record cleared of all charges. (Carrier File No. 930779)

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.

Pursuant to proper notice, the Carrier convened an investigation on July 19, 1993, to determine if Claimant, a Welder-Foreman, had violated Rule 1411 of the Maintenance of Way Rule Book on June 3, 1993.

The pertinent portion of Maintenance of Way Rule 1411 reads:

Track and time limits must be released before expiration of time granted. If additional time is required, authority must be obtained from control operator before authorized time limit has expired. When unable to contact control operator and track and time limits have expired, authority is extended until control operator can be contacted. [Emphasis added.]

At the investigation, the Welding Gang Foreman on Gang 7358, and the Manager of Track Maintenance concurred on the salient facts. Claimant had been granted a track and time permit which expired at 4:00 p.m. on June 3, 1993 to perform work at CP902 on the San Jose Branch. Claimant failed to clear the track before the expiration of the time permit. Pursuant to applicable safety rules, trains could not traverse the segment of track subject to the permit because the track was deemed as remaining under Claimant's authority even though the track and time had expired at 4:00 p.m. As a result, the Milpitas Auto Parts train was delayed for about 40 minutes.

Claimant apparently forgot to clear the track in time. When the train was delayed, the Dispatcher contacted the Manager of Track Maintenance, who after making several radio and telephone calls, finally reached Claimant at his home. Claimant still did not immediately obtain a clearance and the Track Manager finally cleared the track for Claimant at 5:15 p.m.

Claimant frankly admitted that he violated Maintenance of Way Rule 1411. Although he realized that his track and time limits expired at 4:00 p.m. on June 3, 1993, he failed to release the track until 75 minutes after the expiration of the limits.

Following the investigation, the Carrier suspended Claimant for five days which was Level 3 discipline under the Carrier's experimental UPGRADE disciplinary policy.

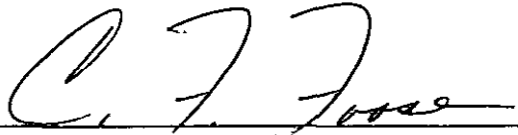
This Board finds that Claimant was careless and his negligence caused a lengthy delay to one train. As a Foreman, it was Claimant's obligation to insure that he timely contacted the Dispatcher to release track and time prior to the expiration time. Other than forgetfulness, which is a flimsy excuse, Claimant articulated no other justification for failing to timely release the track and time in accord with Rule 1411.

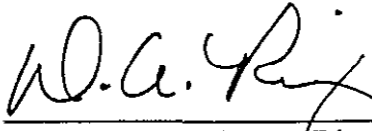
In view of Claimant's personal record, a five day suspension is a penalty commensurate with the gravity of Claimant's rule violation.

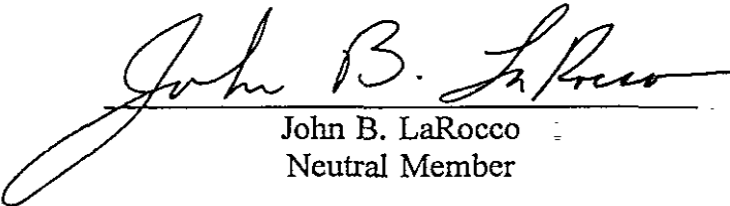
AWARD AND ORDER

Claim denied.

Dated: March 2, 1995


C. F. Foose
Employees' Member


D. A. Ring
Carrier Member


John B. LaRocco
Neutral Member