

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. 6
COMPANY,)	Award No. 6
)	
<u>Carrier.</u>)	

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

MEMBERS OF THE BOARD

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

STATEMENT OF THE CLAIM

The 30-day actual suspension assessed Welder Helper R. J. Peralta from January 6 through February 3, 1984, was without just and sufficient cause, excessive, and in violation of the Agreement.

That the Carrier be required to reimburse Mr. R. J. Peralta 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

Pursuant to proper notice, the Carrier called an investigation on January 11, 1984 to ascertain the facts and Claimant's responsibility, if any, for a collision which occurred between a Carrier vehicle and Train UP 3308 at 8:30 a.m. on January 5, 1984.

At the commencement of their shift on January 5, 1984, Claimant, a Welder Helper, and the Welder were assigned to repair a frog at East Deeth, Nevada. Claimant and the Welder drove a Carrier high rail to the grade crossing at West Deeth. The Welder checked with the train dispatcher and was informed that Train UP 3308 would depart Elko at 7:55 a.m. The Welder estimated that the train would arrive in Deeth approximately forty minutes later. Since it was 7:50 a.m., the Welder decided to mount the truck on the rail and proceed to a siding before the train arrived. During the next thirty minutes or more, the Welder and Claimant attempted to place the truck on the rail. The Welder was driving the truck and Claimant was on the ground directing his movement and keeping alert for any trains. The grade crossing, which had steep inclines on either side of the track, was difficult to traverse due to ice, slush and snow. The Welder and Claimant spent thirty-five to forty minutes attempting

to place the truck on the rail. Their attempts were unsuccessful. Claimant alertly spotted the headlight of approaching UP 3308 and upon informing the Welder, the Welder attempted to clear the crossing. However, the wheels were spinning and the truck was apparently stuck on the crossing. Immediately before impact, Claimant warned the Welder that he should evacuate the truck. The Welder heeded the warning. The train collided with the truck. Fortunately, there were no injuries. The vehicle was demolished.

On January 24, 1984, Carrier suspended Claimant from service for thirty days (including the time he had been withheld from duty pending the investigation process), for violation of Carrier Rules 933 and 934.

II. THE POSITIONS OF THE PARTIES

The Carrier contends that Claimant neglected to protect the Carrier vehicle, the Welder and himself by placing flags or fusees. While the Welder was more culpable than Claimant, both workers were responsible for the accident. A thirty day suspension accurately reflects the degree of Claimant's responsibility for the collision which could have resulted in injuries or fatalities.

Because Claimant was obligated to follow the directives of the Welder, the Organization argues that Claimant cannot be held responsible for the mishap. The Welder instructed Claimant to remain with the vehicle and help align the guide wheels. Claimant could not comply with the Welder's orders and simultaneously walk up the track to set flags. Moreover, the

grade crossing surface was slippery which prevented the two men from mounting the high rail on the track. If weather conditions had been more favorable, they would have placed the high rail on the track and moved to a siding long before the train arrived. When the truck became stuck and the Welder was unable to maneuver it off the crossing, Claimant alertly told the Welder to get out of the truck moments before impact.

III. DISCUSSION

With the benefit of hindsight, there are many steps which the Welder or Claimant could have taken to avoid the collision. Regardless of the culpability of the Welder, the issue presented to this Board is whether, under the circumstances presented in the record, the Carrier has proven that Claimant negligently or unsafely carried out his duties on January 5, 1984. After carefully reviewing the record, we find that the Carrier has not satisfied its burden of proof.

Inasmuch as Claimant, who was unfamiliar with the distance between Elko and Deeth, relied on the Welder for timing the arrival of UP 3308, Claimant did not realize the urgency of the situation. Nonetheless, Claimant was ever vigilant for trains. When he spotted the headlight of UP 3308 in the distance, Claimant properly informed the Welder and they attempted to remove the truck from the crossing. On this two man crew, Claimant was under the direct supervision of the Welder. He had an obligation to follow the Welder's instructions even if, in hindsight, the Welder's orders seemed unreasonable or inadequate. Since the Welder never directed Claimant to protect

the vehicle, the Welder was ultimately responsible for the lack of protection.

When the collision was imminent, Claimant immediately conveyed the danger to his supervisor. Under the specific facts presented in this case, Claimant did not violate any Carrier rules.

AWARD AND ORDER

Claim sustained. The Carrier shall compensate Claimant for his net wage loss in accord with Rule 20. The Carrier shall expunge the discipline from Claimant's personal record. The Carrier shall comply with this Award within thirty days of the date stated below.

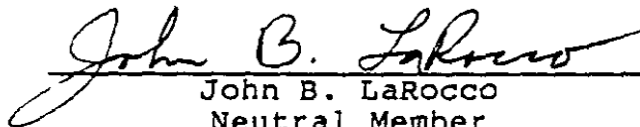
DATED: January 8, 1986



C. F. Foose
Employees' Member



E. R. Myers
Carrier Member



John B. LaRocco
Neutral Member