

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. 7
COMPANY,)	Award No. 7
)	
Carrier.)	

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

MEMBERS OF THE BOARD

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

STATEMENT OF THE CLAIM

The 12-day actual suspension assessed Track Laborer R. L. Clary from March 19 through March 30, 1984, was without just and sufficient cause, excessive and in violation of the Agreement.

That the Carrier be required to reimburse Mr. R. L. Clary 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.

Claimant suffered an on duty injury on November 28, 1983. After procuring the proper releases, Claimant reported to work on Extra Gang 8903 on February 6, 1984.

The next day, Claimant assisted a signal crew with loading their welding machine and he also helped his fellow gang members remove a push car from the rail near Wyche, California. Claimant remarked to a fellow worker that he thought he hurt his back as he was lifting the push car. Claimant continued working.

At the end of the day, the gang retired to their headquarters near Stockton, California. Claimant purportedly informed the Foreman that his back was sore and that he would have to be away from work for a few days. He made an appointment to see his personal physician. Claimant thought that he had aggravated his old injury and that he did not suffer any new on duty injury. On February 9, 1984, Claimant and his wife went to Stockton at the behest of a Carrier Clerk who reminded Claimant that it was necessary to file a formal written personal injury report. According to Claimant and his spouse, they asked for a personal injury form but the Foreman refused to provide one. The Foreman said that he would take care of the matter. On the other hand, the Foreman could not remember the exact substance of the

conversation but was certain that Claimant neither referred to nor asked to report an on duty injury.

The facts adduced at the investigation clearly demonstrate that Claimant failed to promptly report either an on duty injury or an aggravation to an old injury. Workers are obligated to immediately report all injuries, if able to do so, even if the injury is an aggravation of a preexisting condition. The prompt reporting of injuries is essential so that the Carrier may expeditiously investigate the incident, correct any hazardous condition, limit its potential liability and most significantly, insure that the injured worker receives the necessary medical treatment. On February 7, 1984, Claimant did not report his injury at the time it occurred.

However, Claimant belatedly attempted to correct the error. The record does not disclose how the Carrier's Clerk learned of Claimant's alleged on duty injury. The Organization hypothesizes that the source of the information was the Extra Gang Foreman and thus he must have had some knowledge of the injury on February 7, 1984. The Organization's conclusion is, at best, speculation. The Clerk could have gained the information from Claimant himself. Next, the Foreman thwarted Claimant's attempt to fill out the required personal injury form. While the Foreman does not recall what actually occurred on February 9, 1984, there would simply be no reason for Claimant to make a special trip to the gang headquarters unless he intended to formally report the accident. If his Foreman had been more cooperative, Claimant would have properly reported his injury on

February 9, 1984. Since he quickly tried to redress his mistake, a twelve day suspension was excessive and unduly harsh. Therefore, even though Claimant violated General Rule 4004 and Rule 9 on February 7, 1984, we must reduce the assessed penalty to a permanent reprimand.

AWARD AND ORDER

Claim sustained to the extent consistent with our Opinion. The Carrier shall compensate Claimant for his net wage loss in accord with Rule 20. The Carrier shall comply with this Award within thirty days of the date stated below.

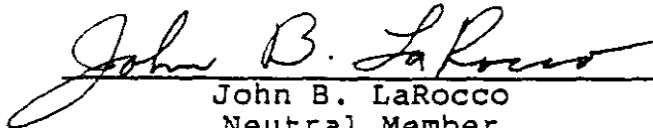
DATED: January 8, 1986



C. F. Foote
Employees' Member



E. R. Meyers
Carrier Member



John B. LaRocco
Neutral Member