AWARD NO. 16
Case No. 16

PUBLIC LAW BOARD NO. 4338

PARTIES) UNION PACIFIC RAILROAD COMPANY
TO )
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

1. The discipline (30 demerits) assessed California Division Bridge and Building Subdepartment Carpenter D. Ojeda for alleged violation of various company rules as indicated in Mr. J. R. Jeff's letter of August 14, 1986 was arbitrary, capricious and unwarranted.

2. The claimant's record shall be cleared of the discipline referred to in Part (1).

FINDINGS: This Public Law Board No. 4338 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was notified to attend a formal investigation in Los Angeles, California to develop the facts and determine his responsibility in connection with an alleged injury he reported on June 6, 1986 while riding in back of a pickup truck at approximately 3:05 p.m. on June 5, 1986, East Yard, Los Angeles, California indicating violation of General Rules A, B, D and L and General Rules 600, 604, 611, 612, 618, 621, 4000, 4001, 4002, 4004, 4162, 4263 as contained in Form 7908, Safety, Radio and General Rules for All Employees, effective April, 1985, last revision April 27, 1986.

Pursuant to the investigation the claimant was found guilty and was assessed thirty demerits.

The claimant appeared at the investigation but refused to answer any questions, including whether he received the notice of investigation, or his signature acknowledging receipt, or if he wished to have a representative present. The claimant refused to testify or to present any witnesses.

The evidence of record establishes that three men and the claimant completed their work at the Wash Track and were taking the pickup to obtain gas. The claimant sat in the back of the truck. The other three men all testified that claimant had room to ride with them in the cab but that he chose to sit in some type of chair in the back. This chair was foam padded with no legs.

These three other employees testified that the windows were down and they did not hear the claimant complain at any time, but when they returned, the claimant jumped out of the truck and commenced yelling obscenities at Mr. Moreno, the B&B Foreman, who was driving the truck. They testified the claimant stated that Mr. Moreno had injured his back.

All of the witnesses testified there was nothing unusual and no bumps that could have caused an injury to the claimant. They also testified that the claimant left and told Mr. Moreno that he was going to a doctor.

The following day Mr. Moreno went to the claimant's home to inquire if he had an injury, and the claimant said that he was not a doctor, he didn't know.

The evidence establishes that the claimant departed the property without filling out an accident report. The claimant was angry; he threw his hard hat and glasses to the ground, breaking the glasses.

The Board has reviewed all the evidence, and there is sufficient evidence for the Carrier to find that the claimant was in fact fabricating an injury and that he was guilty as charged. The fact that the claimant jumped to the ground from the rear of the pickup truck would be sufficient grounds for the Carrier to find the claimant was not, in fact, injured. The evidence reveals there were no sharp turns, no speeding and no complaint from the claimant during the trip in the vehicle. The pickup did travel over some speed bumps but witnesses testified they went over the speed bumps at approximately five miles per hour.

Under the circumstances there is no justification to set the discipline aside.

AWARD: Claim denied.

DATED:

February 19, 1988

Preston J. Moore, Chairman

Union Member

Carrier Member