

PUBLIC LAW BOARD NO. 4950

NEW JERSEY TRANSIT RAIL OPERATIONS, INC. :
 "Carrier" : Case No. 20
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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES : Award No. 12
 "Organization" : :
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STATEMENT OF CASES

C. Marotta - Actual suspension (time held out of service 4/4/89 to 5/29/89) less time medically unfit for duty.

OPINION OF THE BOARD

On April 4, 1989, at approximately 7:15 a.m., Foreman H. Reck allegedly instructed Claimant, who is a back-hoe operator, to place five gallon paint cans on pallets to protect them from flooding in the Register building at Red Bank, New Jersey. At approximately 10:30 a.m. on that date, J. Flannery, Assistant Supervisor-Structures, observed that Claimant was not doing the assignment. Claimant told Flannery that he was waiting for the electricians to come repair the heater in the paint room. Flannery informed Claimant that the electricians were not coming that day. Claimant asked for assistance in doing his assignment, but Flannery replied it was a one person job and instructed Claimant to return to his duties. Claimant refused to do so, stating it was too cold and water was on the floor. Flannery then informed Claimant that if he did not return to his duty he

would be insubordinate. When Claimant did not resume his assignment, Flannery removed him from service.

Carrier maintains that Claimant is guilty of the offense as alleged, and in light of the serious nature of the offense, the amount of discipline assessed was extremely lenient. The Organization contends that the job assignment was not proper for Claimant, and that in any event Claimant properly declined to do the work alone due to a serious injury to his shoulder.

The Board has determined that the claim must be denied.

The record clearly establishes that Claimant was instructed to perform an assignment but that he declined to do so on his own. Although Claimant explained at the hearing on the property that he declined to do the work due to a serious shoulder problem, Claimant did not provide that explanation to Flannery at the time of the incident. In light of the fact that it was Claimant's responsibility to justify his refusal to perform an otherwise valid work assignment, and that he did not do so at the time of the incident or when he was removed from service, the Board concludes that Claimant must be judged guilty of the offense alleged against him. As Carrier committed no procedural errors which warrant setting aside otherwise justifiable discipline, it follows that the claim must be denied.

AWARD

Claim denied.



W. B. Murphy
Carrier Member



W. E. LaRue
Organization Member



S. E. Buchheit
Neutral Member