

## SPECIAL BOARD OF ADJUSTMENT NO. 956

BROTHERHOOD OF MAINTENANCE  
OF WAY EMPLOYEES

and

NEW JERSEY TRANSIT RAIL  
OPERATIONS, INC.

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AWARD NO. 135  
CASE NO. 135

### STATEMENT OF CLAIM:

The Organization requests that the discipline assessed to Mr. G. Johnson be expunged from his record, and that he be made whole for all financial losses suffered in connection with this discipline.

### FINDINGS:

Special Board of Adjustment No. 956, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

The case arose as a result of an incident that occurred on New Year's Eve, December 31, 2005 at the Hoboken facility. The weather was inclement that day. Claimant was not scheduled to work. Moreover, earlier in the week, he had turned down an offer to work overtime on New Year's Eve.

Towards the end of the day shift around 4:00 p.m., it was snowing heavily. Track Supervisor Ruiz was instructed by Line Engineer Smith to hold over the employees on duty and bring in several additional employees to clear the snow.

Claimant volunteered to come in. He told Supervisor Ruiz that he could work for only a few hours because he did not have anyone to babysit for his children beyond that time. In addition, Claimant has a special needs child who could not be left alone. Supervisor Ruiz told him to report for overtime and stay as long as he could do so. Claimant was among a crew of seven employees who worked overtime to salt the Hoboken platforms and remove the snow over the next three or four hours. By that time, the snow had stopped.

At approximately 8:00 p.m., Line Engineer Smith contacted Supervisor Ruiz and told him that the employees were needed to cover snow duty on the Gladstone Line, where it was still snowing. Six of the seven employees refused to go, despite

Line Engineer Smith's admonition that they would be taken out of service for insubordination. Claimant was among those who refused to go to the Gladstone line. He was removed from service and, after an investigative hearing, he was issued a thirty day suspension.

Insubordination in this industry, and others, is universally viewed as a most serious offense. The necessity of complying with rules or directives issued by supervision is so well-established that no citation is needed for this fundamental proposition. If an employee is aggrieved by the instructions of a supervisor, he is obligated to comply now and grieve later. An employee who disregards the instructions of supervision does so at his own peril.

From the Carrier's viewpoint, the Claimant's insubordination was all the more egregious because it was part of a concerted action by a group of employees who refused to obey Line Engineer Smith's instructions. The Organization takes a different view, and argues that the record demonstrates that there was a genuine discrepancy between the orders originally given by Track Supervisor Ruiz and the subsequent directives issued by Line Engineer Smith.

There are occasions when mitigating or extenuating circumstances should be considered in disciplinary matters. This is one such instance. The record developed at the investigation clearly shows that there was a conflict between Supervisor Ruiz and Line Engineer Smith as to the overtime expectations at this facility. Employees were, in effect, given a mixed message as to what was expected of them in terms of overtime requirements. The situation as a whole suggests that this muddled direction contributed to the events that took place on December 31, 2005. This is particularly true in the Claimant's case, as he had been given explicit permission by his supervisor to work overtime only for so long as his child care permitted.

Added to the balance is the fact that there is no evidence that Claimant had any sort of disciplinary record with the Carrier. On the contrary, Supervisor Ruiz testified that this crew, including the Claimant, is comprised of valued, hard working employees who generally work a considerable amount of overtime.

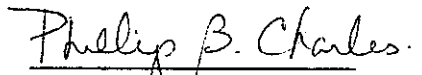

After careful consideration of all these material factors, the Board finds that the thirty day suspension was excessive and that a written reprimand would be a sufficient penalty for the misconduct charged. It is so ordered.

**AWARD**

**Claim sustained in accordance with the Findings.**



**ANN S. KENIS  
Neutral Member**

  
**Carrier Member** *Dissent*  
**Organization Member**

**Dated this    day of            , 2006.**