

## SPECIAL BOARD OF ADJUSTMENT NO. 956

|                            |   |               |
|----------------------------|---|---------------|
| BROTHERHOOD OF MAINTENANCE | ) |               |
| OF WAY EMPLOYES            | ) |               |
|                            | ) | AWARD NO. 144 |
| and                        | ) | CASE NO. 144  |
|                            | ) |               |
| NEW JERSEY TRANSIT RAIL    | ) |               |
| OPERATIONS, INC.           | ) |               |

### STATEMENT OF CLAIM:

The Organization requests that the discipline (15-day suspension) assessed to Mr. D. Garcia 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.

By notice dated November 6, 2006, the Claimant was instructed to attend an investigation in connection with the charge that he refused to comply with supervisory instructions on October 19, 2006. After several postponements, an investigative hearing was convened on May 22, 2007.

At the hearing, the testimony and evidence showed that on October 19, 2006, the Claimant was working as an Assistant Foreman on a stone train gang under the supervision of L. Parsons. The duties of the four-member gang included dumping stone on new siding that was built on an out of service track. Because the task was new to the Claimant and another gang member, Supervisor Parsons instructed them how to turn the air on, operate the doors and dump the stone.

The train proceeded for a time but around noon, Supervisor Parsons took over the train and said to the Claimant, "Come on , Danny, I'll show you how to dump stone." Parsons testified that the Claimant response was as follows:

He just kind of ignored me. He was walking away from me. So I said a second time, Danny, come on I'll show you how to dump stone. He said, I'm going to go get a slice of pizza. I said, come on, Danny, I'll show you how to

dump stone and then he gave me one of these waves like you know forget you and he just kept walking.

Another supervisor, D. Gotay, was present and witnessed the exchange. He testified that he couldn't say what the Claimant's hand gesture meant, but "if you're walking away and you're going to get lunch that means you're not going to do the job." Supervisor Parsons and the other employees successfully completed the task of dumping the stone around 1:00 p.m. and they took their lunch at that time.

Claimant testified that Parsons instructed him to come one time before the Claimant responded that he was going to get some pizza. Claimant stated that he did not intend to act in an insubordinate manner and his gesture to Parsons was merely meant to signify that he would be right back after getting some lunch. Claimant further stated that the reason he did not comply with Parsons' directive was because he felt it was unsafe for him, as a novice, to perform the job.

The other gang members testified either that they did not hear Parsons issue the Claimant a directive or that Parsons only told the Claimant one time to assist in dumping the stone.

Subsequent to the investigation, the Claimant was issued a 30-day suspension. The Organization protested the discipline, contending that the Carrier did not meet its burden of establishing that there was insubordination. Further, the Organization argued that the Claimant was not given sufficient time to learn the responsibilities involved in dumping stone. Therefore, there was a valid safety issue.

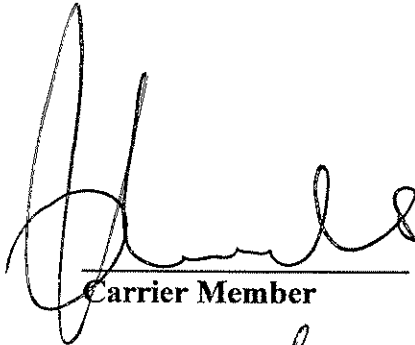
The Board reviewed the record and we find that the Carrier presented sufficient evidence that the Claimant failed to follow the instructions of his supervisor as set forth in the charges. To the extent that there were credibility conflicts in the record, we find that they were properly addressed by the hearing officer. Moreover, notwithstanding the Organization's arguments, we are not persuaded that there was any justification for refusing to obey Supervisor Parsons. If there was a legitimate safety issue, it is logical to assume that the Claimant would have raised the matter with Supervisor Parsons rather than indicating that he was going for lunch. The Claimant was not free to disregard the directives of a supervisor, regardless of whether the directives were inconvenient or contrary to what the Claimant wanted to do. As a result of being found noncompliant with his supervisor's directives, the Claimant placed himself in line for discipline.

Insubordination is a serious offense. It is clear that the Carrier must have the right to assume that an order will be followed, even if the employee disagrees or finds it inconvenient. Based on the record as a whole, it would not appear that the

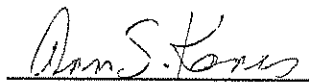
imposition of a 30-day suspension was arbitrary or capricious. Thus, we are precluded from substituting our judgment for that of the Carrier. Claim denied.

AWARD

Claim denied.



Carrier Member



ANN S. KENIS  
Neutral Member



Organization Member

Dated this 3<sup>rd</sup> day of June, 2008.