

Special Board of Adjustment No. 956

PARTIES  
TO  
DISPUTE:

Brotherhood of Maintenance of Way Employees  
and  
New Jersey Transit Rail Operations

STATEMENT  
OF  
CLAIM:

The dismissal of John Aronés for alleged insubordination was unjust and arbitrary and he was not afforded a fair and impartial hearing. His record shall be cleared of the charge brought against him on May 24, 1984 and he will be restored to service with seniority and other rights unimpaired and compensation for all wagesloss suffered.

FINDINGS:

On the day in question, Bridge and Building Foreman Flannery was having his men renew ties on a removable span. They worked until about 5 p.m. and put in for two hours overtime after returning to headquarters.

About an hour earlier, at 4 p.m., it had become obvious that the track gang was not going to finish its part of the work on time. Mr. Flannery began to help the men spike ties while claimant passed out spikes to the men. Foreman Flannery then requested claimant to begin to spike and when he replied that he was a mechanic

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and did not do track work, Mr. Flannery told him that it was an emergency situation and "we needed him" to assist the track gang. When claimant persisted in his refusal to do the work, Mr. Flannery sent him home. It is Mr. Flannery's testimony that:

"As far as I was concerned, the incident was going to be over. It wasn't brought to the light of Dick Hartnett or any of the other supervisors until Mr. Allen (the General Chairman) called the office the next day."

According to Foreman Flannery, Mr. Allen called the office because claimant was very unhappy that he was not going to receive the same overtime pay the other men were receiving for staying until 5:30 p.m. He went home at 4 p.m.

There is some dispute as to whether a true emergency existed. The record shows that the bridge was out between 8 a.m. and 4 p.m. and a line of boats was waiting to sail into the inlet at Shark River Draw. The first boats began to go through at about 4:30 p.m. However, there is testimony that not all of the trackmen were actually working at the time claimant was asked to spike ties, but that some were just watching and cheering the Foreman on as he was spiking.

Insubordination is a serious offense, particularly in the railroad industry where employees work away from headquarters and time schedules must be met. While in the present case, claimant refused to comply with a direct order to spike ties, such extreme discipline as dismissal is excessive, particularly when it is considered that claimant is a mechanic and not a trackman, that the foreman's order required him to work as a trackman, that other trackmen were

available to perform the work and that Mr. Flannery did not consider claimant's refusal sufficiently serious to call for major discipline. Mr. Flannery was not going to make anything of the incident until the General Chairman called the office.

The discipline will be reduced to a suspension of four months. Claimant will be reinstated immediately with seniority rights unimpaired and with compensation for all wage loss suffered subsequent to the aforementioned period of suspension. Had it not been for his prior record, the discipline would have been less substantial.

AWARD:

Claim sustained to the extent indicated in last paragraph, supra, of Findings. To be effective within 30 days..

Adopted at Newark, N.J., January 28, 1985.



Harold M. Weston, Chairman



Carrier Member



Employee Member