

PUBLIC LAW BOARD NO. 3241

In the Matter of:)	
)	
BROTHERHOOD OF MAINTENANCE)	National Mediation Board
OF WAY EMPLOYES,)	Administrator
)	
Organization,)	
)	
and)	
)	Case No. 27
UNION PACIFIC RAILROAD)	Award No. 27
COMPANY,)	
)	
Carrier.)	

Hearing Date: January 12, 1988
Hearing Location: Sacramento, California
Date of Award: September 28, 1988

MEMBERS OF THE BOARD

Employees' Member: C. F. Foose
Carrier's Member: J. J. Shannon
Neutral Member: John B. LaRocco

STATEMENT OF THE CLAIM

- "1. The Carrier violated the provisions of the current Agreement when on May 21, 1986 it dismissed Track Laborer Mr. J. R. Beal on the basis of unproven charges, said action being discriminatory and in abuse of discretion.
- "2. The Carrier will now be required to reinstate Claimant Beal to his former position with seniority and all other rights restored unimpaired and compensated for all wage loss suffered."

OPINION OF THE BOARD

This Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act as amended; that this Board has jurisdiction over the parties and the subject matter of the dispute herein; that this Board is duly constituted by an Agreement dated July 23, 1982; and that all parties were given due notice of the hearing held on this matter.

The Carrier charged Claimant with being absent without proper authority from April 14, 1986 through April 30, 1986. Claimant signed the investigation notice on May 5, 1986. The investigation was scheduled for May 12, 1986.

Prior to the investigation, Claimant wrote two letters to the Roadmaster dated May 5 and May 8, 1986. In the correspondence, Claimant declared that he had procured his Foreman's permission to be absent on April 14 and 15, 1986. Claimant further wrote that he worked from April 16 through April 19, 1986. Claimant was away from work the week of April 21, 1986 but he told a friend to inform his Supervisor that he would be taking a one-week vacation. Claimant concluded that due to financial setbacks and transportation difficulties, he was unable to report to work beginning on April 28, 1986.

Claimant did not appear at the May 12, 1986 hearing. The Track Supervisor testified that Claimant was absent on April 14 and 15, 1986 and from the period beginning April 21, 1986 through the day of the investigation. The Tie Gang Foreman and the Track Supervisor confirmed that Claimant did not seek permission for his absence. Moreover, the Track Machine Operator asserted that

Claimant never requested a vacation for the week of April 21, 1986. The Machine Operator also related that on or about April 15, 1986, Claimant said that he was going to quit the railroad.

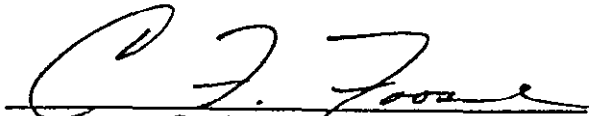
The record contains substantial evidence that Claimant was absent without permission on April 14 and 15, 1986 and from April 21 through April 30, 1986. Claimant did not make any reasonable effort to contact the Carrier. While Claimant supposedly told a friend to ask for a one week vacation on Claimant's behalf, there is no evidence that the friend communicated Claimant's request to the Carrier. When Claimant entrusts a communication to a messenger, he retains ultimate responsibility if the message does not reach the Carrier. More importantly, the Carrier never consented to giving Claimant vacation time.


Claimant has a poor prior work record, and thus, this Board does not find any justification for disturbing the assessed penalty. Furthermore, Claimant's overall course of conduct shows that he has little interest in maintaining his employment relationship with the Carrier.

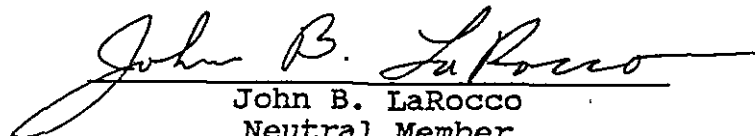
AWARD AND ORDER

Claim denied.

Dated: September 28, 1988


C. F. Foose
Employees' Member


J. J. Shannon
Carrier's Member


John B. LaRocco
Neutral Member