

PUBLIC LAW BOARD NO. 3241

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|-------------------------------|---|--------------------------|
| In the Matter of: |) | National Mediation Board |
| |) | Administrator |
| BROTHERHOOD OF MAINTENANCE OF |) | |
| WAY EMPLOYES, |) | |
| |) | |
| Organization, |) | |
| |) | |
| and |) | Case No. 29 |
| |) | Award No. 29 |
| UNION PACIFIC RAILROAD |) | |
| COMPANY, |) | |
| |) | |
| Carrier. |) | |
| |) | |

Hearing Date: January 26, 1989
Hearing Location: Sacramento, California
Date of Award: December 13, 1989

MEMBERS OF THE COMMITTEE

Employes' Member: C. F. Foose
Carrier Member: L. E. Smith
Neutral Member: John B. LaRocco

ORGANIZATION'S STATEMENT OF THE CLAIM

1. That the Carrier's decision to dismiss Extra Gang Laborer Elvis Pete was without just and sufficient cause and in violation of the current Agreement.
2. Claimant will now be placed in his former position with seniority and all other rights restored with compensation for all wage loss suffered.

Carrier File No. 860052

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.

Pursuant to written notice dated June 16, 1986, the Carrier charged Claimant, a Laborer on Tie Gang 9811, with violating Rule G earlier the same day. As a result of an investigation held on June 23, 1986, Claimant was dismissed from service.

By 6:30 a.m. on June 16, 1986 (a Monday morning), the members of the gang had left their outfit cars and reported to the job site to begin their day's work. However, the Track Supervisor found Claimant in his bunk car. The Supervisor observed Claimant staggering back and forth. The Supervisor asked Claimant why he was not out working. Slurring his words, Claimant replied that the bull cook had asked him to help clean the outfit cars. At the Track Supervisor's request, the Gang Foreman came to the outfit car. Both supervisors smelled the strong odor of alcohol on Claimant's breath. In addition, the Gang Foreman related that Claimant grabbed a table because he was swaying back and forth. Later, the Track Supervisor learned that the bull cook had not asked Claimant to clean the outfit cars.

At the investigation, Claimant denied that he was under the influence of alcohol. More specifically, he testified that he had not consumed any alcoholic beverages from 2 p.m. the previous day (Sunday) until his discussion with the Track Supervisor and

the Gang Foreman early on Monday morning. However, Claimant inconsistently admitted that he was "hung over" and still intoxicated because he drank a case, 24 cans, of beer (before 2 p.m.) on Sunday.

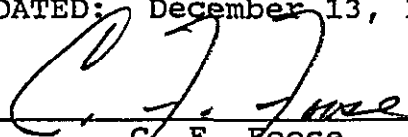
The Carrier presented substantial empirical evidence that Claimant consumed alcoholic beverages while subject to duty. In addition Claimant was still under the influence of alcohol when his tour of duty started on Monday, June 16, 1986. Two supervisors observed Claimant manifesting all of the characteristics of an intoxicated person. They detected the odor of alcohol on his breath. Claimant slurred his speech and had to hold onto a table to maintain his balance.

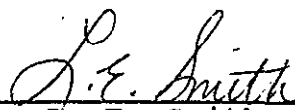
Due to his poor prior record, discharge was commensurate with the gravity of Claimant's offense. Claimant had been previously dismissed for violating Rule G. Upon his reinstatement, Claimant did not avail himself of the opportunity to improve his conduct and, more particularly, he was unable to stay away from alcoholic beverages.

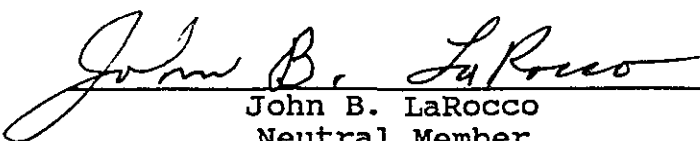
AWARD AND ORDER

Claim denied.

DATED: December 13, 1989


C. F. Foose
Employees' Member


L. E. Smith
Carrier Member


John B. LaRocco
Neutral Member