

PUBLIC LAW BOARD NO. 3241

In the Matter of:)	National Mediation Board
)	Administrator
BROTHERHOOD OF MAINTENANCE OF)	
WAY EMPLOYES,)	
)	
Organization,)	
)	
and)	Case No. 30
)	Award No. 30
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 violated the current Agreement when it dismissed Track Laborer T. A. Monfredi. Said action being excessive, unduly harsh and in abuse of discretion.
2. That the Carrier reinstate Claimant to his former Carrier position with seniority and all other rights restored unimpaired with pay for all loss of earnings suffered, and his record cleared of all charges.

Carrier File No. 870555

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.

In spite of receiving proper written notice, Claimant, an Extra Gang Laborer, did not appear at an investigation held on April 23, 1987, to determine if Claimant had used alcoholic beverages while on Company property. The Organization protested the Hearing Officer's decision to hold the hearing in Claimant's absence. As a result of the investigation, the Carrier dismissed Claimant from service on June 13, 1986.

After the members of Extra Gang 881 had gone to work on April 9, 1987, the Roadmaster and Track Supervisor discovered numerous empty beer cans in a spike container, which was being used as a trash receptacle, at the foot of Claimant's bunk in the outfit car. When the Track Supervisor brought Claimant in from the job site, Claimant admitted that he had been drinking beer in the bunk car. More specifically, Claimant related that he drank alcoholic beverages in the car each and every day from April 5 through April 9. A Scarfire Operator also testified that he had observed Claimant drinking beer in the bunk car.

The Hearing Officer has the discretion to hold an investigation in the absence of the charged employee so long as the employee was given proper notice of the hearing. In this case, the return receipts show that Claimant received notice of

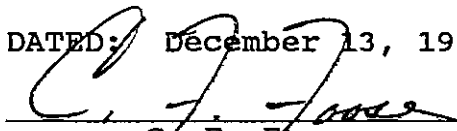
the hearing and the hearing postponements. An employee who fails to appear at a hearing does so at his own peril. NRAB Third Division Award No. 25418 (Carter). Under the particular circumstances of this case, the Hearing Officer did not abuse his discretion by holding the hearing even though the principal was absent.

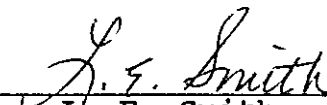
Since Claimant did not appear at the hearing, the testimony of the Carrier witnesses went unrefuted. Two Carrier supervisors observed empty beer cans near Claimant's bunk, which is strong evidence Claimant consumed beer in the outfit car. Also, they both declared that Claimant admitted drinking alcohol on Carrier property. More importantly, an independent witness, the Scarfire operator, observed Claimant drinking in the bunk car. Therefore, the Carrier presented substantial evidence that Claimant violated Rule G.

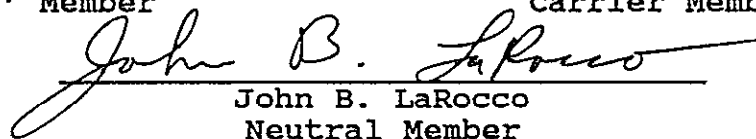
AWARD AND ORDER

Claim denied.

DATED: December 13, 1989


C. F. Foose
Employees' Member


L. E. Smith
Carrier Member


John B. LaRocco
Neutral Member