

PUBLIC LAW BOARD NO. 3241

In the Matter of:)	National Mediation Board
)	Administrator
)	
BROTHERHOOD OF MAINTENANCE OF)	
WAY EMPLOYES,)	
)	
Organization,)	
and)	
)	
UNION PACIFIC RAILROAD)	Case No. 39
COMPANY,)	Award No. 39
)	
Carrier.)	
_____)

Hearing Date: June 4, 1992
Hearing Location: Sacramento, California
Date of Award: April 16, 1993

MEMBERS OF THE BOARD

Employes' Member: C. F. Foose
Carrier Member: D. A. Ring
Neutral Member: John B. LaRocco

ORGANIZATION'S STATEMENT OF THE CLAIM

1. That the Carrier's decision to dismiss Truck Driver Mr. Rick Reynoso on unproven charges, was in violation of the provisions of the current Agreement. Said action being capricious and in abuse of discretion.
2. The Carrier shall now be required to reinstate Claimant to his former Carrier position with seniority and all other rights restored unimpaired and with compensation for all wage loss suffered as a result of the aforementioned violation.

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.

At an investigation held on June 2, 1989, the Track Supervisor confirmed that Claimant, a Truck Driver, did not report to duty between May 1 and May 5, 1989. In addition, Claimant did not call the Carrier to mark off duty. The Supervisor further related that Claimant had not reported to work since May 5, although he was only charged with being absent without proper authority for the first five work days in May, 1989. Claimant did not attend the investigation despite being provided with proper notice.

On May 5, the Supervisor called Claimant's home. A person who identified herself as Claimant's sister informed the Track Supervisor that Claimant had gone to Mexico and she did not expect him back.

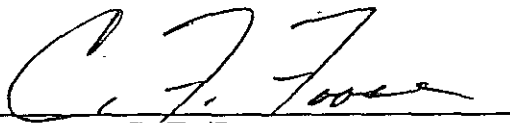
Following the investigation, the Carrier dismissed Claimant from service for being absent without proper authority.

The Carrier submitted substantial evidence that Claimant failed to report to duty on the five days in May. Claimant lacked permission to be off work because he did not even call the Carrier to work off duty or provide an excuse for his absences. Finally, Claimant's failure to appear at the investigation evinces that he is abandoning his employment. Based on the information the Carrier received from a member of Claimant's family, Claimant apparently wished to terminate his employment relationship with the Carrier.

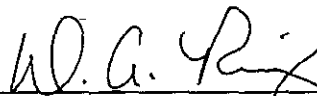
AWARD AND ORDER

Claim denied.

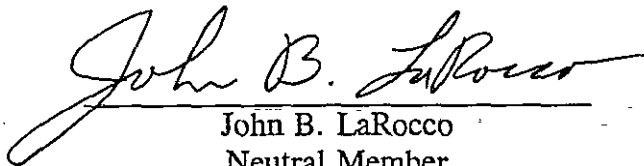
Dated: April 16, 1993



C. F. Foose
Employees' Member



D. A. Ring
Carrier Member



John B. LaRocco
Neutral Member