

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. 48
COMPANY,)	Award No. 48
)	
Carrier.)	

Hearing Date: March 9, 1994
Hearing Location: Sacramento, California
Date of Award: March 2, 1995

MEMBERS OF THE BOARD

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

ORGANIZATION'S STATEMENT OF THE CLAIM

1. That the Carrier violated the current Agreement when it dismissed B&B Welder R. A. Neves. Said action being excessive, unduly harsh 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 with compensation for all wage loss suffered as a result of the aforementioned violation. (920097).

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 proper notice, the Carrier charged Claimant, a 12 year veteran of the Bridge and Building Department, with conduct unbecoming an employee and unauthorized possession of Company property. Following an investigation, which was held on September 30, 1991, the Carrier dismissed Claimant from service.

The facts adduced at the investigation are uncontested.

Acting under the authority of a search warrant, agents from the Bureau of Narcotics Enforcement of the State of California conducted a search of Claimant's residence in Sacramento, California on September 18, 1991. The agents discovered a sizeable amount of marijuana and some cocaine. As a result, Claimant was arrested for the possession and sale of marijuana and the possession of cocaine. A Carrier special agent later searched Claimant's property and found a fire extinguisher belonging to the Carrier.

In their written report, Bureau of Narcotics Enforcement Agents stated that Claimant admitted possessing and selling marijuana because he had encountered financial difficulties and so, he needed money. He admitted possessing cocaine for personal use.

Claimant confirmed that he was arrested and arraigned for the sale and possession of controlled substances. He explained that he retrieved the fire extinguisher from a junk pile in the maintenance yard.

Subsequent to his dismissal, Claimant pleaded *nolo contendere* and was incarcerated for approximately one year. After his release from jail, Claimant underwent treatment for his drug problem and started a business as a taxicab owner/driver. Claimant sincerely wishes to return to the Carrier's service.

At the investigation, the Carrier presented substantial evidence proving that Claimant engaged in conduct unbecoming an employee. The Carrier need not prove that Claimant is guilty of the felony charges which were proffered against him. Rather, the Carrier need only present substantial evidence (as opposed to evidence beyond a reasonable doubt) that Claimant engaged in conduct which placed the Carrier in an unfavorable light.

In this case, Claimant's misconduct was serious. He was arrested not just for the possession of controlled substances but for the sale of an illegal narcotic. Moreover, Claimant aggravated the offense by possessing a Carrier fire extinguisher without permission. Claimant's continued custody over the fire extinguisher demonstrates that he intended to permanently deprive the Carrier of ownership over the extinguisher. If Claimant actually obtained the extinguisher from a garbage pile, he should nonetheless, have asked for permission of his supervisor to take the item. (It could have been hazardous.)

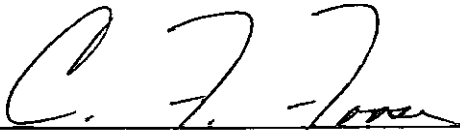
Claimant's excuse, set forth in the report of the Narcotics Agents, that he had to engage in the sale of drugs because he was experiencing financial difficulties is unjustifiable. Many people go through periods of financial difficulty or even extreme financial shortages and they do not resort to criminal activity. If anyone having financial troubles had a license to steal, chaos and anarchy would be rampant in our society.

It is laudatory that Claimant has engaged in diligent and sincere efforts to rehabilitate himself and to build a new life for himself. Unfortunately, the loss of a valuable privilege, such as a good job with the railroad, is the penalty that Claimant must pay for his behavior. This Board hopes that Claimant becomes a productive employee for his own concern or another employer.

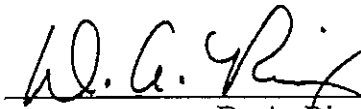
AWARD AND ORDER

Claim denied.

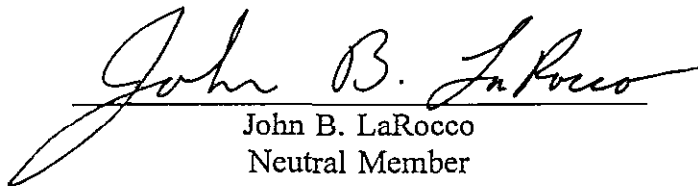
Dated: March 2, 1995



C. F. Foose
Employees' Member



D. A. Ring
Carrier Member



John B. LaRocco
Neutral Member