

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. 50
COMPANY,	)	Award No. 50
	)	
Carrier.	)	
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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 provisions of the current Agreement when it dismissed Foreman R. F. Carson. Said action being based on unproven charges, is 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 with compensation for all wage loss suffered and his record be cleared [sic] of all charges. (920558)

**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.

While operating a dump truck on April 14, 1992, Claimant, a Spot Gang Foreman, negligently collided with an automobile. [See Public Law Board No. 3241, Award No. 51.] Since Claimant's carelessness caused the mishap, the Carrier ordered Claimant to undergo a reasonable suspicion drug and alcohol test. The urinalysis was positive for amphetamines and marijuana.

At a subsequent investigation held to determine if Claimant violated Rule G, Claimant candidly admitted that he had ingested marijuana.<sup>1</sup> Claimant speculated that the positive result for amphetamines stemmed from an over the counter hay fever medication that he was taking on the day of the accident.

Following the investigation, the Carrier dismissed Claimant from service.

In this case, the Carrier presented substantial evidence that Claimant violated Rule G. The test results were not only reliable and thus, dispositive but also Claimant admitted ingesting an illegal narcotic.<sup>2</sup> Claimant is guilty of a Rule G violation when an illegal drug is present in his body while he is on duty regardless of whether or not he was under the influence of the drug.

The next issue is whether or not Claimant should have access to the Carrier's employee assistance program (EAP). In Award No. 51, which this Board decided in conjunction with the

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<sup>1</sup> Claimant asserted that he had a constitutional right to take drugs while off duty and off Carrier property.

<sup>2</sup> Suffice it to state, the United States Constitution does not contain any provision giving citizens the right to possess and use illegal narcotics.

case herein, we found that while Claimant had negligently operated the dump truck, the collision, itself, was minor and caused little property damage. Claimant's negligence, while it constituted reasonable cause to require him to undergo a drug test, was not a serious safety violation disqualifying Claimant from access to the EAP. Therefore, dismissal was an excessive and unduly harsh penalty so long as Claimant successfully completes a prescribed regimen under the supervision of an EAP counselor.<sup>3</sup>

The Carrier shall admit Claimant to the EAP. Claimant shall be subject to all of the obligations and regulations governing the EAP. If, and when, Claimant successfully completes the program and an EAP certifies that Claimant may return to service, the Carrier shall reinstate Claimant but he will be subject to random drug testing in accord with Company policy.

If Claimant fails to cooperate with the EAP counselor, his dismissal will be reactivated. This Board will retain jurisdiction over this case should any dispute arise over the application of our remedy or Claimant's failure, if any, to cooperate with the EAP counselor or complete the prescribed regimen in the EAP.

#### AWARD AND ORDER

The Board renders the following Award:

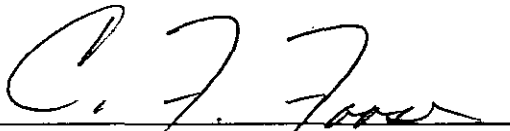
- 1) The Carrier shall admit Claimant to its EAP Program;
- 2) If Claimant successfully complies with the EAP program and an EAP counselor certifies that Claimant is fit to return to service, the Carrier shall reinstate Claimant to service and shall thereafter be subject to Carrier policies with regard to such reinstatements, including random drug testing;

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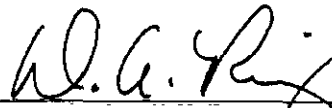
<sup>3</sup> There are two other mitigating circumstances which militate in favor of placing Claimant in the Carrier's EAP. First, Claimant accumulated almost 18 years of service with the Carrier. Second, subsequent to his dismissal, Claimant sought rehabilitative treatment which shows that he sincerely wants to try to correct his problem.

- 3) If Claimant fails to cooperate with the EAP counselors or he does not successfully complete the prescribed EAP regimen, his dismissal shall be reactivated;
- 4) If Claimant is reinstated to service, he shall be reinstated with his seniority unimpaired but without pay for time lost;
- 5) This Board retains jurisdiction over this case should any dispute arise over the application of our remedy herein; and,
- 6) The Carrier and Claimant shall commence complying with this Award within 30 days of the date stated below.

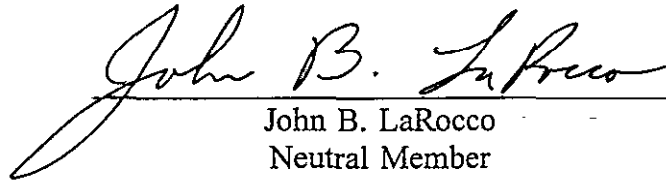
Dated: March 2, 1995



C. F. Foose  
Employees' Member



D. A. Ring  
Carrier Member



John B. LaRocco  
Neutral Member