

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. 51
COMPANY,)	Award No. 51
)	
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 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. (620559)

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 working as a Spot Gang Foreman on April 14, 1992 and while operating a Carrier dump truck, Claimant inadvertently hit another automobile. A woman asked Claimant to move his dump truck because it was blocking her exit from a parking space. Since the automobile had moved since Claimant had last observed it, Claimant wrongly assumed that he should move the dump truck forward instead of backward to clear a path for the automobile. Unfortunately, when Claimant moved the dump truck forward, the truck hit the right passenger door causing approximately \$1,300 in damage.

Claimant admitted his negligence on the day of the incident and in an investigation in an ancillary Rule G case. [See Public Law Board No. 3241, Award No. 50.]

Although the investigation herein was held in Claimant's absence, there was not any prejudice to Claimant's rights since he had already testified about the accident in the other investigation

Based on the record, this Board finds that Claimant committed slight negligence as opposed to a serious safety rule violation. His momentary lapse of alertness (he failed to walk around the truck to ascertain the presence of any obstacles), constituted a minor safety rule violation which was sufficient grounds for a reasonable suspicion drug and alcohol test but an insufficient safety rule violation to warrant permanent dismissal.


However, since this Board has already found Claimant guilty of Rule G, Claimant can only gain reinstatement to service by going through the Carrier's employee assistance program in accord with the order this Board set forth in Award No. 50.

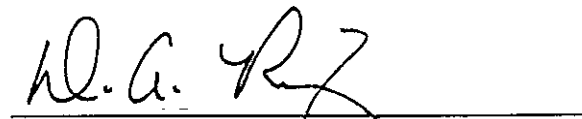
Therefore, the remedy that we laid down in Award No. 50 is equally applicable to the claim herein.

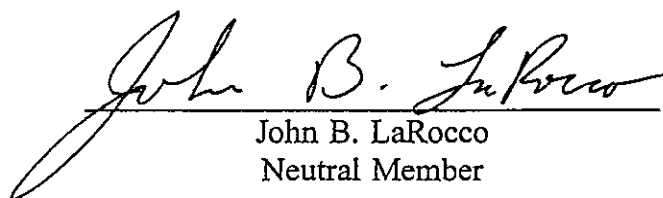
AWARD AND ORDER

The claim is sustained in part and denied in part. The claim is sustained to the extent specified in the order of this Board set forth in Award No. 50. The remainder of the claim is denied.

Dated: March 2, 1995


C. F. Foose
Employees' Member


D. A. Ring
Carrier Member


John B. LaRocco
Neutral Member