

PUBLIC LAW BOARD NO. 3241

In the Matter of:	)	National Mediation Board
	)	Administrator
	)	
BROTHERHOOD OF MAINTENANCE OF	)	
WAY EMPLOYEES,	)	
	)	
Organization,	)	
and	)	
	)	
UNION PACIFIC RAILROAD	)	Case No. 54
COMPANY,	)	Award No. 54
	)	
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 Agreement when it erroneously issued Road Way Equipment Operator R. L. Rainwater a 30 day suspension. Said action being an 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 be cleared of all charges. (930434)

**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 a notice dated March 1, 1993, the Carrier charged Claimant, an Equipment Operator on Gang 7432, with allegedly committing two separate offenses: 1) absenting himself from his assigned duties on February 8, 1993; and, 2) falsely listing 10 hours of straight time pay on the time roll for February 8, 1993.

Subsequent to the investigation held on March 8, 1993, the Carrier suspended Claimant from service for 30 days for being absent without proper authority. Since it did not discipline Claimant for falsifying the time roll, the Carrier implicitly exonerated him of the second charged offense.

At the onset, the Organization argues that the March 1, 1993 notice of charges was deficient. Because the Carrier disciplined Claimant for an offense which did not appear in the March 1, 1993 notice. The Organization submits that the Carrier charged Claimant with being absent from his assigned duties but it disciplined him for being absent without proper authority.

The Board finds that these are one and the same offense. The words "absenting yourself" mean that Claimant made himself absent without permission. The word "yourself" signifies that Claimant was acting under his own authority which impliedly means he was acting without the authority of his supervisors. Therefore, the notice sufficiently apprised Claimant that he was being charged with being absent without proper authority on February 8, 1993.

At the March 8, 1993 investigation, Claimant candidly admitted that he was absent on February 8, 1993 and that he failed to call the Carrier to mark off absent. Claimant did not offer

any excuse for his absence. Thus, the Carrier submitted substantial evidence proving that Claimant was absent without authority on February 8, 1993.

The primary issue in this case is what is the appropriate measure of discipline.

On the former Western Pacific, the Carrier implemented, apparently on an experimental basis, a new disciplinary policy called UPGRADE. While this Board will not relate all of the intricacies of the policy, UPGRADE is designed, among other objectives, to insure that discipline is consistently meted out for similar offenses across the property. In conjunction with consistent and equitable discipline, UPGRADE inherently instills the principle of progressive discipline in the levels of sanctions for various offenses listed in the policy.

In this case, Claimant was already at Level 3 when he committed the offense herein. The absent without authority offense is a Level 1 offense. The table of discipline penalties (which as we already ruled inherently incorporates progressive discipline) and UPGRADE policy mandates that when an employee at Level 3 commits a Level 1 offense, the employee is elevated to and given the penalty specified for Level 4.<sup>1</sup>

In compliance with UPGRADE, the Carrier assessed Claimant with a 30 day suspension.

The Organization argues that 30 days is excessive and unduly harsh for simply being absent without permission on one work day. However, contrary to the Organization's arguments, the Carrier only disciplined Claimant one level which is the appropriate discipline for an absent without leave offense.<sup>2</sup> Because the principle of progressive discipline is instilled in UPGRADE, Claimant actually had to serve a 30 day suspension because the Level 1 offense elevated him

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<sup>1</sup> Level 4 is a 30 day suspension without pay.

<sup>2</sup> The Level 1 punishment is a letter of reprimand.

from Level 3 to Level 4. Claimant placed himself in this predicament by previously committing other violations which placed him at Level 3.

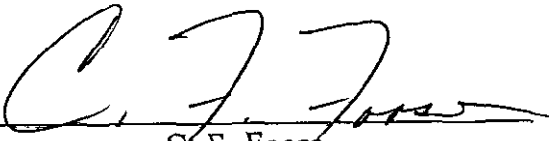
This Board emphasizes that it is neither approving nor disapproving of the Carrier's UPGRADE disciplinary policy in its entirety. An issue of such a magnitude will have to be adjudicated in another case. The Board finds merely within the peculiar circumstances of this case that the UPGRADE policy is consistent with the traditional principle of progressive discipline.

In view of Claimant's poor record, the Carrier could assess a 30 day suspension for being absent with authority for one day.

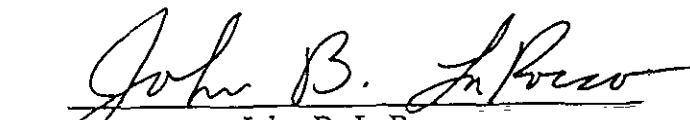
**AWARD AND ORDER**

Claim denied.

Dated: March 2, 1995

  
C. F. Foose  
Employees' Member

  
D. A. Ring  
Carrier Member

  
John B. LaRocco  
Neutral Member