

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. 62
COMPANY,	)	Award No. 62
	)	
Carrier.	)	
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Hearing Date: May 7, 1996  
Hearing Location: Sacramento, California  
Date of Award: July 22, 1996

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 Track Laborer Mr. A. J. Caravantes. Said action being excessive, unduly harsh and in abuse of discretion.
2. That the Carrier now reinstate Claimant to his former Carrier position with seniority and all other rights restored unimpaired, with pay for all loss suffered and his record cleared of all charges.

**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.

Claimant, a Laborer on Gang 9097, was late to work on November 10, 1993. The Carrier charged him with tardiness. Claimant voluntarily waived his right to an investigation and he accepted placement at Level 1 in the Carrier's UPGRADE Disciplinary Program.

On June 8, 1994, Claimant failed to report to work. Once again he knowingly waived his right to investigation and accepted discipline. Since he was already at Level 1, the second offense elevated him to Level 2 in the UPGRADE Disciplinary Policy.

Claimant did not report to work at the assigned starting time of 6:00 a.m. on June 14, 1994 because he overslept. Claimant testified that he attempted to call the Carrier at 6:30 a.m., but nobody answered the telephone. Shortly after 10:00 a.m., Claimant paged the Track Supervisor to notify him of the absence.

The Carrier convened an investigation on June 22, 1994, to determine if Claimant failed to report to duty at the designated place and time on June 14, 1994. There was no dispute in the facts. Claimant candidly admitted that he had failed to report to duty. Thus, Claimant was guilty of the charged offense.

The Carrier decided to strictly apply the UPGRADE Disciplinary Program which provides that when an employee commits three similar offenses within a 36-month period, the employee

is placed at Level 5 in UPGRADE upon a finding that the employee committed the third infraction.<sup>1</sup> Thus, the Carrier dismissed Claimant from service.

Although the UPGRADE Policy contemplates that dismissal will be the appropriate penalty for the third offense of a similar nature within a 36-month period, we find that, under the peculiar circumstances of this case, dismissal is an excessive and unduly harsh punishment. Although we find the discipline excessive, this Board is not overturning the UPGRADE Disciplinary Policy or, more specifically, we are not addressing the reasonableness of placing an employee at Level 5 for three infractions within 36 months or whether this aspect of the Program is an appropriate application of progressive discipline.

Rather, the unique facts herein justify a tempering of the penalty. Claimant was merely tardy one day and absent on two days. It is true that he was on the precipice of committing excessive absenteeism but the Board determines that Claimant deserves one final opportunity to demonstrate that he can regularly and punctually report to work.

Therefore, we will reinstate Claimant to service without back pay for time lost.

To preserve the integrity of the UPGRADE Program and to impress upon Claimant that no further offenses will be tolerated, the Board orders that Claimant be placed at Level 4 upon his reinstatement to service.

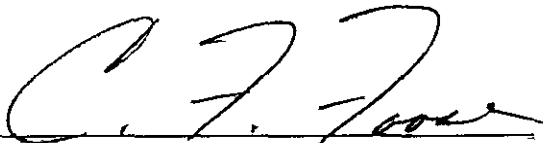
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<sup>1</sup> Level 5 is discharge.

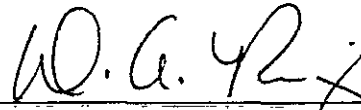
AWARD AND ORDER

The claim is sustained to the extent consistent with our findings. The Carrier shall reinstate Claimant to service with his seniority unimpaired but without pay for time lost. The Carrier shall place Claimant at Level 4 in the UPGRADE Disciplinary Program. The Carrier shall comply with this Award within 30 days of the date stated below;

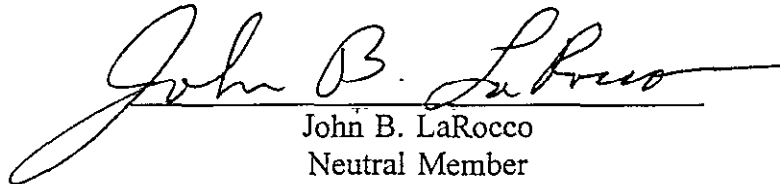
Dated: July 22, 1996



C. F. Foose  
Employees' Member



D. A. Ring  
Carrier Member



John B. LaRocco  
Neutral Member