

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. 63
COMPANY,)	Award No. 63
)	
Carrier.)	
)	

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 Welder B. O. Rodriguez. 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.

Pursuant to notice dated July 20, 1994, the Carrier charged Claimant, a Welder on Gang 7357, with being absent without proper authority beginning on July 15, 1994.

At the August 8, 1994 investigation, the Manager of Track Maintenance testified that he granted Claimant a one-week vacation commencing on or about July 3, because Claimant was purportedly experiencing personal problems. Later, the Manager extended the time Claimant had permission to be off through July 13 because ostensibly Claimant lacked transportation to work but Claimant expected to have his truck repaired by July 14. Therefore, Claimant was obligated to report to work on July 14, 1994.

Claimant was absent on July 14, 15, 18, 19 and 20. He did not contact the Carrier. After the July 20, 1994 notice was sent to Claimant, Claimant's mother called the Carrier and asked the Carrier to grant Claimant a leave of absence. The Carrier denied the request because it learned that Claimant was incarcerated in the San Joaquin County Jail.

At the investigation, Claimant admitted that he served a jail sentence from July 18 to August 2, 1994.

Following the investigation, the Carrier dismissed Claimant from service.

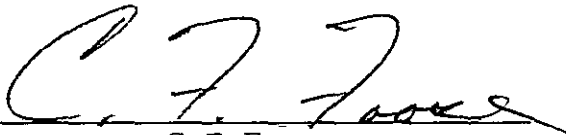
Claimant's admissions, coupled with the testimony of the Track Maintenance Manager, conclusively show that Claimant was absent without property authority beginning on July 15, 1994. Incarceration in a penal institution is not a valid justification for being away from work.

Moreover, if Claimant's jail term began on July 18, he never gave any explanation for being absent on July 14 and 15. Claimant aggravated his offense by failing to contact the Carrier to notify it that he would be absent. The Carrier rightly depends on its employees to regularly and punctually report to work. Given the seriousness of the infraction as well as the aggravating circumstances, the Board must affirm the assessed discipline.

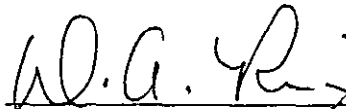
AWARD AND ORDER

Claim denied.

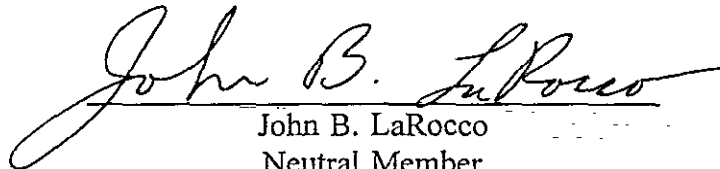
Dated: July 22, 1996



C. F. Foose
Employees' Member



D. A. Ring
Carrier Member



John B. LaRocco
Neutral Member