

PUBLIC LAW BOARD NO. 3241

In the Matter of:)	National Mediation Board
)	Administrator
BROTHERHOOD OF MAINTENANCE OF)	
WAY EMPLOYES,)	
)	
Organization,)	
and)	
)	
UNION PACIFIC RAILROAD COMPANY)	Case No. 69
(former Western Pacific Railroad),)	Award No. 69
)	
Carrier.)	
)	

Hearing Date: November 18, 1997
Hearing Location: Sacramento, California
Date of Award: February 5, 1998

MEMBERS OF THE BOARD

Employees' Member: Rick Wehrli
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 Jorge G. Nunez. 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. (950333)

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.

Following a hearing held on December 16, 1994, the Carrier dismissed Claimant, a Welder, from service for being absent without property authority on November 21, 1994. The Carrier discharged Claimant because this was his third unauthorized absence during the last 36 months.

At the hearing, Claimant admitted that he did not report to duty on November 21, 1994. Claimant also conceded that he did not call the Carrier to mark off absent prior to the start of his 6:30 a.m. shift. The Manager of Track Maintenance testified that Claimant called at 9:00 a.m. on November 21, to state that he had to take care of some personal business with his attorney. At the hearing, Claimant confirmed that he had a court session scheduled for 8:30 a.m.

Based on Claimant's frank admission, the record contains substantial evidence that he did not have authority to be absent from work on November 21, 1994. Perhaps, if Claimant had called the prior evening or before 6:30 a.m. on November 21, the Carrier might have given him permission to take care of his personal business. By both not showing up for work and by failing to call before the start of his shift, Claimant demonstrated that he is not a dependable employee.

Although the record shows that Claimant has had some difficulty with unauthorized absences during the last 12 months, he has been a good employee and developed into an excellent Welder during his many years of service since 1978. Based on his accumulated service record, the Board will mitigate the dismissal herein to a suspension measured by the time Claimant has been out of

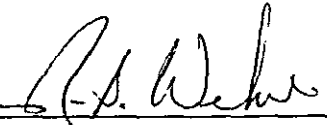
service. This Board emphasizes that Claimant is being reinstated on a last chance basis. Claimant must insure that his personal problems do not interfere with his duty to regularly and punctually report to work. Further infractions will not be tolerated.

So that the record is clear, the Carrier may place Claimant at Level 3 Upgrade upon his reinstatement.

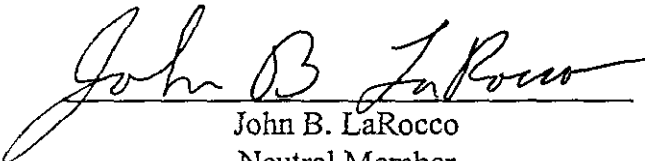
AWARD AND ORDER

Claim sustained but only to the extent consistent with our findings. The Carrier shall reinstate Claimant to service with his seniority unimpaired but without pay for time lost. Upon reinstating Claimant, the Carrier may place Claimant at Level 3 Upgrade. The Carrier shall comply with this Award within 30 days of the date stated below.

Dated: February 5, 1998


Rick Wehrli
Employees' Member


D. A. Ring
Carrier Member


John B. LaRocco
Neutral Member