

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. 8
COMPANY,)	Award No. 8
)	
Carrier.)	

Hearing Date: March 18, 1986
Hearing Location: Sacramento, California
Date of Award: November 9, 1987

MEMBERS OF THE BOARD

Employees' Member: Mr. C. F. Foose
Carrier Member: Mr. E. R. Meyers
Neutral Member: Mr. John B. LaRocco

STATEMENT OF THE CLAIM

1. That the Carrier's decision to suspend Extra Gang Foremen W. D. James for a period of thirty (30) days was without just and sufficient cause and in violation of the Agreement.

2. Claimant W. G. James shall now be compensated for all wage loss suffered during the period he was suspended and have 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.

By written notice dated July 6, 1984, the Carrier leveled three charges against Claimant, the Foreman of Extra Surfacing Gang No. 9822. Specifically, the Carrier alleged that Claimant: 1.) was absent without authority on July 3, 1984; 2.) improperly sought a full day's pay for June 29, 1984 when Claimant actually reported to work one hour late; and 3.) submitted false daily gang production reports for June 28 and 29, 1984. Claimant was withheld from service pending an investigation.

At a July 13, 1984 investigation, the pertinent facts were undisputed. In summary, Claimant candidly conceded that he committed each of the charged offenses.

First, on July 3, 1984, Claimant left his home in Elko, Nevada to commute to Wells, Nevada (the location of the gang). Claimant's designated starting time was 6:30 a.m. On his way to Wells, Claimant became tired. He pulled his vehicle over to the side of the road and fell asleep. Claimant awoke at 8:00 a.m. and returned to his home. Claimant did not contact the Carrier to mark off absent. The Assistant Gang Foreman declared that Claimant's failure to report to work caused a slight delay in getting the large gang to begin work on July 3, 1984.

Second, Claimant reported to work one hour late on June 29, 1984. He overslept. The time roll showed Claimant sought pay for one hour more than he had worked on June 29, 1984. Although the Timekeeper filled in the number of hours on Claimant's time card for June 29, 1984, Claimant acknowledged that he gave the Timekeeper authority to sign Claimant's name.

Third, on the daily progress reports for June 28 and June 29, 1984, Claimant noted that the gang had completed more work than was actually accomplished. In particular, Claimant turned in a report showing the track had been raised, lined and tamped between mile post 720 and mile post 722. A small portion of this segment of track was finished but not near the amount represented on the progress reports. The gang apparently had problems with some machines and encountered other unavoidable production delays. Claimant reported substantially more footage than the Surfacing Gang performed on the two dates over the objections of the Assistant Foreman. Claimant explained that he wanted to avoid reporting two consecutive low productivity days. He intended to make up the work on subsequent good production days. As of July 5, 1984, the Roadmaster verified that the work purportedly performed on June 28 and 29, 1984 remained uncompleted.

Following the investigation, the Carrier suspended Claimant from service for thirty days. During the on the property appeal, both the Carrier and the Organization alluded to a special agreement allegedly made between local Carrier and Organization officials concerning the amount of discipline Claimant would

receive. There is no documentary evidence memorializing the terms of the so-called local arrangement. Thus, the scope of our review is limited to determining if the Carrier proffered substantial evidence proving that Claimant committed the three charged offenses.

Based on Claimant's admissions, the Board concludes that the Carrier presented sufficient evidence that Claimant committed all three offenses. Claimant defended his misconduct with lame excuses.

Claimant declared that he overslept on June 29, 1984 and was drowsy on July 3, 1984 because he was busy during off hours moving his belongings into a new residence. Nonetheless, Claimant cannot allow his personal affairs to interfere with his obligation to punctually and regularly report to work. Oversleeping is not a valid excuse for tardiness. Moreover, Claimant exacerbated the offense by failing to notify the Carrier in advance that he would be late or absent from his assigned supervisory duties.

Claimant conceded that he was ultimately responsible for submitting the incorrect June 29, 1984 time roll. He neglected to reduce the total time by one hour to reflect his tardiness.

Finally, Claimant did not accurately report the amount of work which his gang accomplished on June 28 and 29, 1984. If production was minimal on the two days, Claimant should have explained that the gang experienced equipment problems. Instead, he deliberately and grossly overstated the amount of work performed by the gang on the two dates. Performing the work on a

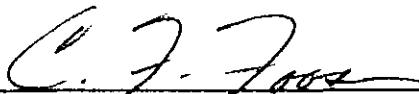
later day would hardly remedy the prior false report. Indeed, Claimant would have had to continue falsifying reports because, on the later dates, he would understate the gang's productivity.

Therefore, the Board must affirm the assessed discipline.

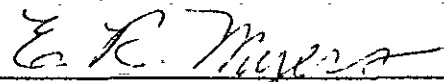
AWARD AND ORDER

Claim denied.

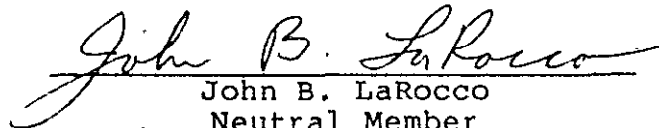
DATED: November 9, 1987



C. F. Foose
Employees' Member



E. R. Meyers
Carrier Member



John B. LaRocco
Neutral Member