

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. 10
COMPANY,	)	Award No. 10
	)	
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 Track Inspector, Mr. G. J. Heiselt for a period of thirty (30) calendar days, commencing October 22, 1984 through and including November 20, 1984 was in violation of the Agreement, unduly harsh and based on unproven charges.

2. Claimant Heiselt's record shall be cleared of all charges and he shall be reimbursed for all wage loss suffered for the intervening period he was suspended.

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 proper notice dated October 22, 1984, the Carrier charged Claimant, a Track Inspector on Gang 4319 at Elko, Nevada, with failing to report to duty from October 11, 1984 to October 19, 1984. The Carrier withheld Claimant from service pending the investigation.

At an October 31, 1984 investigation, Claimant admitted that he was absent from duty without permission during the period specified in the Notice of Investigation. Also, Claimant did not call the Carrier to mark off absent. Despite numerous attempts, the Carrier was unable to contact Claimant. During Claimant's absence, the Roadmaster was forced to assign the Section Foreman to patrol the tracks in Claimant's territory.

While Claimant realized that his absences were unexcused, he detailed the reasons for his absence. In sum, Claimant was experiencing both personal and job related problems which temporarily led him to conclude that he wanted to sever his employment relationship with the Carrier.

Claimant's absence began when he received an alarming telephone call from his newly married daughter in San Diego. According to Claimant, his daughter's husband had threatened to

inflict bodily injury on Claimant's daughter. Claimant went to San Diego on October 10, 1984, and returned to Nevada on October 16, 1984.

Claimant's on the job problems allegedly arose because his supervisor impeded him from properly performing his track inspection duties. Claimant asserted that he was often assigned other duties (such as delivering materials, flagging for track gangs and providing the Roadmaster with general assistance). Claimant became frustrated since he lacked sufficient time to patrol his territory. According to Claimant, he inspected his track less frequently than required by Federal Railroad Administration regulations. However, Claimant inconsistently testified that he sometimes voluntarily assumed other duties without receiving an actual assignment. Moreover, Claimant acknowledged that when he asked, the Roadmaster provided him with additional help.

Finally, Claimant assured the Hearing Officer that he was ready and willing to resume his Track Inspector position and he promised to faithfully and competently execute his duties. Claimant was confident that he had surmounted both his personal and job related problems.

On November 12, 1984, the Carrier suspended Claimant from service for thirty days for being absent without authority and gave Claimant credit for the time he spent out of service pending the investigation. Also, the Carrier disqualified Claimant from his Track Inspector position. Approximately two months later, Claimant voluntarily resigned from service. His resignation was

unconnected to this case and there is no evidence that Claimant relinquished his right to progress his disciplinary appeal to this Board.

After carefully reviewing the record, the Board finds that the Carrier presented substantial evidence that Claimant failed to protect his assignment from October 11, 1984 to October 19, 1984. Claimant's prolonged absence was unauthorized and unexcused. Since he failed to contact the Carrier before traveling to San Diego, Claimant exposed the Carrier to possible Federal Railroad Administration fines because nobody was patrolling the track in Claimant's territory. There is some evidence that Claimant was under a great deal of stress because he could not devote adequate time to his track inspection responsibilities. However, Claimant raised this rationalization only after he was cited for an investigation. He should have conveyed his concerns to his Supervisor before abandoning his job. Alternatively, Claimant could have sought a medical leave of absence. Nonetheless, Claimant often assumed duties which he was not obligated to perform. Claimant did not present any evidence that he was ordered to engage in ancillary duties which effectively prevented him from patrolling his track.

Since Claimant abandoned his job for over one week, the Carrier reasonably concluded that Claimant no longer possessed the requisite fitness and ability to fill the Track Inspector position. Also, the Carrier could not trust Claimant's representations that he would capably perform his duties in the future. If Claimant was truly interested in maintaining his

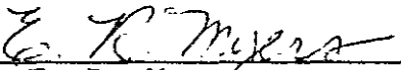
Inspector position, he should have, at the very least, notified the Carrier that he would be absent from work. The disqualification plus the thirty day suspension was commensurate with the seriousness of the proven offense.

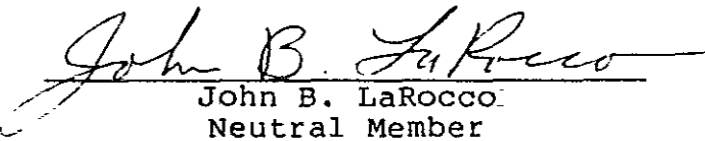
AWARD AND ORDER

Claim denied.

DATED: November 9, 1987

  
C. F. Foose  
Employees' Member

  
E. R. Meyers  
Carrier Member

  
John B. LaRocco  
Neutral Member