

PUBLIC LAW BOARD NO. 3241

In the Matter of: )  
 )  
BROTHERHOOD OF MAINTENANCE ) National Mediation Board  
OF WAY EMPLOYES, ) Administrator  
 )  
Organization, )  
 )  
and )  
 )  
UNION PACIFIC RAILROAD ) Case No. 22  
COMPANY, ) Award No. 22  
 )  
Carrier. )  
\_\_\_\_\_ )

Hearing Date: April 28, 1987  
Hearing Location: Sacramento, California  
Date of Award: September 28, 1988

MEMBERS OF THE BOARD

Employes' Member: C. F. Foose  
Carrier's Member: J. J. Shannon  
Neutral Member: John B. LaRocco

STATEMENT OF THE CLAIM

- "1. That the Carrier violated the agreement when it dismissed Track Laborer J. M. Sanchez without just and sufficient cause, said action being abuse of discretion and unduly harsh.
- "2. That the Carrier be required to reinstate Claimant to his former position with the Carrier with seniority and all other rights restored unimpaired and compensation for all wage suffered."

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.

At an August 13, 1985 hearing held to determine if Claimant, a Laborer on Extra Gang 8865, was absent without proper authority on Monday, August 5, 1985, Claimant candidly admitted that he not only failed to report to work on August 5 but he also neglected to contact the appropriate supervisor to report his impending absence. Claimant contended that he attempted to call the Gang Foreman on Sunday afternoon but he was unable to reach him. Claimant made no other attempts to contact the Carrier even though he knew he was going to be absent the next day because his automobile was inoperable. Therefore, the Carrier presented substantial evidence demonstrating that Claimant was absent from his August 5, 1985 assignment without proper authority.

The next question is whether or not the Carrier's decision to discharge Claimant from service was arbitrary or capricious. Since Claimant had displaced onto a Laborer position on Gang 8865 on February 6, 1985, he was absent a total of fifteen days. Ten of the fifteen absences were unauthorized. The Carrier twice disciplined Claimant for failing to protect his assignment in 1985. The Carrier calculated that Claimant's absenteeism rate was about one absence for every ten workdays. The Track Supervisor warned

Claimant that he must improve his attendance. Nonetheless, Claimant's attendance record was showing some improvement. He was absent only one day a month in June, July, and August. Since Claimant was attempting to improve his attendance, this Board is convinced that Claimant deserves one final opportunity to demonstrate that he can become a dependable employee.

Furthermore, dismissal was an excessive penalty. Unauthorized absence is an offense which is particularly susceptible to correction through the application of progressive discipline.

Claimant shall be reinstated to service with his seniority unimpaired but without pay for time lost. We issue Claimant a final warning. Further offenses will not be tolerated. We hope the lengthy period Claimant has spent out of service will encourage him to regularly and punctually report to his assignment.

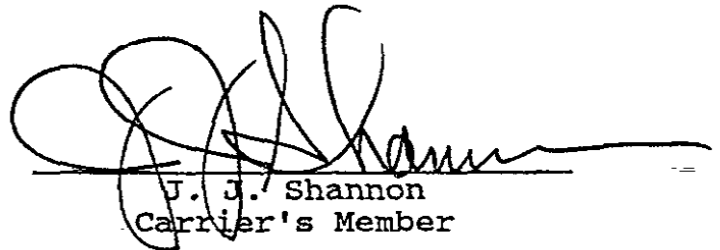
AWARD AND ORDER

Claim sustained but only to the extent consistent with our opinion. The Carrier shall reinstate Claimant to service, with his seniority unimpaired, but without pay for time lost. The Carrier shall comply with this award within thirty days of the date stated below.

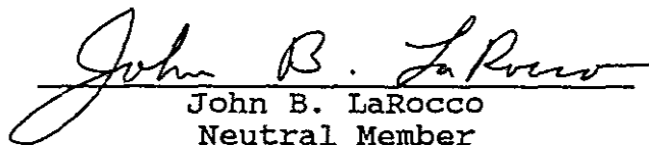
Dated: September 28, 1988



C. F. Foose  
Employes' Member



J. J. Shannon  
Carrier's Member



John B. LaRocco  
Neutral Member