

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. 24
COMPANY,) Award No. 24
)
Carrier.)

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

MEMBERS OF THE BOARD

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

STATEMENT OF THE CLAIM

- "1. The Carrier violated the provisions of the current Agreement when in a letter, dated December 16, 1985, it dismissed Extra Gang Laborer Mr. E. T. Malzahn from its service on the basis of unproven charges, said action being in abuse of discretion.
- "2. Carrier shall now exonerate Mr. Malzahn of all charges and reinstate him to his former position with the Carrier with seniority and all rights restored unimpaired and compensation for all wage loss 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.

In Award No. 23, this Board upheld the Carrier's assessment of a thirty day suspension against Claimant. In this case, Claimant appeals his dismissal from service for being absent without proper authority.

By notice dated November 15, 1985, the Carrier charged Claimant with being absent without permission on nine consecutive workdays from November 5, 1985 through and including November 15, 1985.

Despite receiving proper notice, Claimant did not appear at the December 2, 1985 investigation. At the hearing, the Gang Timekeeper, who maintains the gang attendance records, testified that Claimant last performed service for the Carrier on November 1, 1985. Thereafter, Claimant was absent from work. He did not contact the Carrier to seek permission to be away from work. The Timekeeper confirmed that Claimant was absent, without authority, during the period specified in the November 15, 1985 notice of investigation. The Track Supervisor in charge of Gang 8665 corroborated the Timekeeper's testimony. The Supervisor also emphasized that Claimant had never asked for a leave of absence.

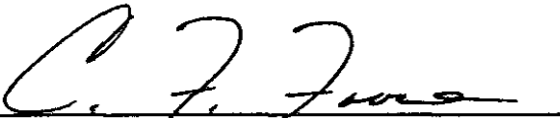
The record contains substantial evidence proving that Claimant committed the charged offense. Because Claimant decided not to appear at the investigation, there was no evidence contradicting the testimonies of the Track Supervisor and the Timekeeper. In summary, Claimant abandoned his job.

The Carrier rightly expects its employees to regularly report to work. It cannot maintain its right of way without a full complement of workers. Claimant's long absence without contacting the Carrier warranted his dismissal. Finally, Claimant's failure to attend his own investigation evinces his desire to terminate his employment relationship with the Carrier.

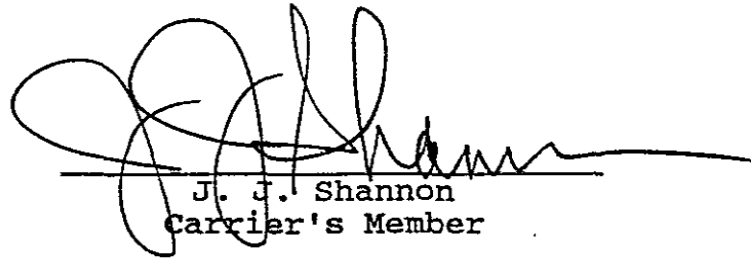
AWARD AND ORDER

Claim denied.

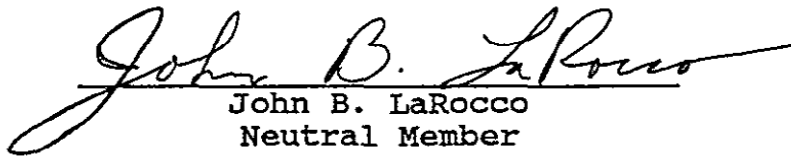
Dated: September 28, 1988



C. F. Foose
Employes' Member



J. J. Shannon
Carrier's Member



John B. LaRocco
Neutral Member