

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. 43
COMPANY,)	Award No. 43
)	
Carrier.)	

Hearing Date: June 4, 1992
Hearing Location: Sacramento, California
Date of Award: April 16, 1993

MEMBERS OF THE BOARD

Employees' Member: C. F. Foose
Carrier Member: D. A. Ring
Neutral Member: John B. LaRocco

ORGANIZATION'S STATEMENT OF THE CLAIM

1. That the Carrier violated the current Agreement when it dismissed System Tamper Operator Michael W. Stokes. 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 of earnings suffered, and 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.

Claimant herein is the same Claimant this Board dealt with in Award No. 42. In Award No. 42, we upheld the Carrier's decision to suspend Claimant for thirty-days for being absent without proper authority. As a result of our decision in that case, Claimant was required to serve not only the thirty day suspension but also a fifteen day previously deferred suspension.

Therefore, the Carrier notified Claimant that he was suspended through July 8, 1989. Since July 8 was a Saturday, Claimant was obligated to report to work on Monday, July 10, 1989.

Claimant neither reported to work nor called the Carrier to mark off duty on July 10, 1989. Indeed, the Track Supervisor did not hear from Claimant until July 13, 1989. Claimant asked the Supervisor when he should report to work and the Supervisor responded that Claimant was supposed to come back to work three days earlier. Next, Claimant asked the Supervisor for two months off so he could address some unspecified personal problems. The Track Supervisor informed Claimant that he could not grant the request. He told Claimant to seek a leave of absence from the Program Engineer. Claimant did not do so.

Since the Track Supervisor had no further contact from Claimant and Claimant was not reporting to work, the Carrier charged Claimant with being absent from work without proper authority for seventeen days. Claimant did not appear at the August 4, 1989 investigation

despite receiving proper notice of the hearing. Following the investigation, the Carrier dismissed Claimant from service.

The record fully supports the Carrier's decision that Claimant was guilty of the charged offense. Claimant did not report to duty and did not contact his Supervisor to mark off duty during the seventeen days between July 10, and July 27, 1989. While Claimant did talk with the Supervisor on July 13, he did not get permission to be away from work and he never followed up on his alleged need for a two month leave of absence.

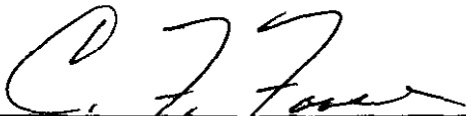
Finally, Claimant's failure to attend the investigation evinces his intent to terminate his employment relationship with the Carrier.

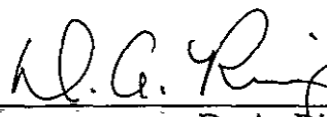
In view of Claimant's poor prior disciplinary record, we find no reason to disturb the assessed penalty.

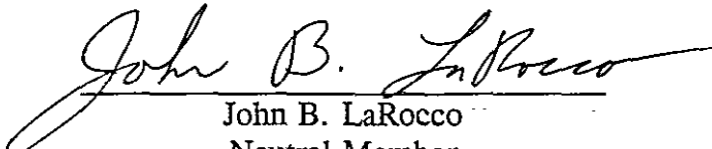
AWARD AND ORDER

Claim denied.

Dated: April 16, 1993


C. F. Foose
Employees' Member


D. A. Ring
Carrier Member


John B. LaRocco
Neutral Member