

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. 49
COMPANY,	)	Award No. 49
	)	
Carrier.	)	
	)	

Hearing Date: March 9, 1994
Hearing Location: Sacramento, California
Date of Award: March 2, 1995

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's decision to dismiss Welder Helper Robert Snyder on unproven charges, was in violation of the provisions of the current Agreement. Said action being capricious and in abuse of discretion.
2. The Carrier shall now be required to reinstate Claimant to his former Carrier position with seniority and all other rights restored unimpaired with compensation for all wage loss suffered as a result of the aforementioned violation.

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 9:30 a.m. on December 23, 1991, Claimant, a Welder Helper on Welding Gang 7359, told his Track Supervisor that he was going home with his family to celebrate the upcoming holidays and to visit a sick uncle. The Track Supervisor told Claimant that he could not leave because he was needed to perform welding work. Claimant asserted that he was going on vacation. The Supervisor responded that Claimant did not have any vacation and reiterated that his request to go home was denied. Claimant replied that he was leaving anyway. As he left the gang, Claimant told another worker that he was taking his family to see the sites of San Francisco.¹

The Track Supervisor immediately reported the incident to the Manager of Track Maintenance. Claimant never requested a formal leave of absence from the Track Maintenance Manager.

Claimant was absent from December 23, 1991 until January 6, 1992. The day after his return to work, the Carrier served Claimant with a notice that it was convening an investigation to determine if Claimant had failed to comply with instructions and if he had been absent from his assigned gang without authority.

At the January 10, 1992 hearing, Claimant admitted that the Track Supervisor told him not only that he could not leave but also that he did not have any vacation left to take. Claimant

¹ Claimant and his family resided in New Mexico.

testified that he told the Supervisor that he had to get away from work because he was concerned about an uncle back home who was close to death. Claimant informed the Supervisor that he would return to the gang on January 6.

On January 17, 1992, the Carrier dismissed Claimant from service.

The record reveals that Claimant committed insubordination and he was absent from duty without an approved leave.

The Track Supervisor unequivocally and directly told Claimant that he could not go home because his welding services were needed. Claimant also never went to the Manager of Track Maintenance to procure an approved leave of absence. Thus, he defied the order of his Track Supervisor. When he stayed away from work for 13 days, he was also guilty of being absent without permission.

Claimant offered a feeble excuse for his misconduct. If he was truly concerned about a sick uncle, Claimant never explained why he first took his family to San Francisco. Rather, it is apparent that Claimant wanted to spend the holiday season on a vacation tour with his family. Claimant's selfishness reeked hardship on his fellow gang members. Claimant's absence placed an additional burden on his fellow workers who also had to work during the holiday season. Claimant was not entitled to receive any special treatment especially since he had exhausted his vacation credits.

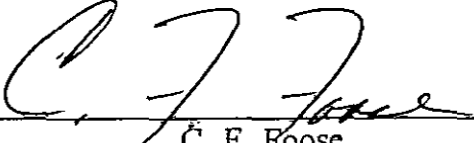
Claimant's personal record indicates that he has been twice disciplined in the past for being absent without authority and for the second offense he served a 30 day suspension. In addition, Claimant had accumulated only two and a half years of service with the Carrier at the time of his dismissal.

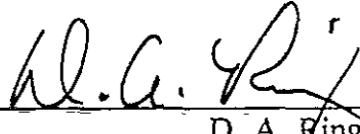
Since the Carrier applied progressive discipline and due to Claimant's short length of service, this Board does not find any justification for disturbing the assessed discipline.

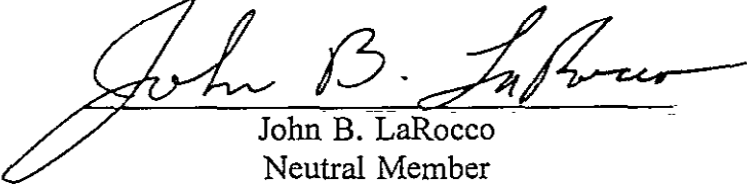
AWARD AND ORDER

Claim denied.

Dated: March 2, 1995


C. F. Foose
Employees' Member


D. A. Ring
Carrier Member


John B. LaRocco
Neutral Member