

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. 5
COMPANY,)	Award No. 5
)	
Carrier.)	

Date of Hearing: March 7, 1985
Place of Hearing: Sacramento, California
Date of Award: January 8, 1986

MEMBERS OF THE BOARD

Employes' Member: Mr. C. F. Foose
Carrier Member: Mr. E. R. Meyers
Neutral Member: Mr. John B. LaRocco

STATEMENT OF THE CLAIM

The dismissal of Truck Driver J. R. Lamper on March 12, 1984, was without just and sufficient cause, excessive, unduly harsh, an abuse of discretion, and in violation of the Agreement.

That the Carrier be required to restore Mr. J. R. Lamper to service with pay for all time lost and expunge the charge from his record.

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.

The facts adduced at a February 24, 1984 investigation are undisputed.

The Union Pacific hired Claimant in October, 1981. In April, 1983, Claimant established seniority under the Western Pacific Agreement.

On February 15, 1984, the Assistant Rail Gang Supervisor directed Claimant to deliver material from Portola, California to Gerlach, Nevada. Claimant informed the Supervisor that he had recently lost his driver's license but assured the Supervisor that there would be no problem if he was stopped by law enforcement authorities en route to his destination. Although he knew that Claimant was not carrying a valid operator's license and the Carrier's truck did not have proper motor carrier plates, the Foreman inexplicably permitted Claimant to perform the assignment.

In Nevada, a Sheriff's Deputy stopped Claimant on the highway. When questioned, Claimant gave the officer a false name. Claimant declared that he hid behind a false identity because he was afraid of some outstanding speeding violations he had accumulated. A few moments later, Claimant recanted and truthfully identified himself. His suspicions aroused, the Deputy conducted a frisk of Claimant's person and discovered a

narcotic in Claimant's front pocket. Claimant was arrested for unlawful possession of a controlled substance, failure to produce a Nevada driver's license and operating a vehicle without a motor carrier license.

Claimant posted bond and was released from jail on the evening of February 15, 1984. Claimant reported back to the outfit car but did not report to his usual assignment on February 16, 1984.

On March 12, 1984, the Carrier dismissed Claimant from service for violation of Rule G and for failure to report to his assigned duties on February 16, 1984.

At the February 24, 1984 investigation, Claimant admitted that he possessed drugs while on duty on February 15, 1984. Rule G forbids not only the use of narcotics while subject to duty but also the possession of controlled substances.

Claimant's primary defense is that his Supervisor was at least partially culpable for the events that occurred because he sent Claimant on an assignment in a vehicle without proper plates and with the knowledge that Claimant lacked a driver's license. However, the Supervisor was persuaded by Claimant's assurances that his inability to produce a driver's license would not cause any problems. In addition, Claimant himself precipitated his own predicament when he gave the officer an alias. Finally, there is no evidence in the record that the Supervisor condoned Claimant's possession of drugs while on duty.

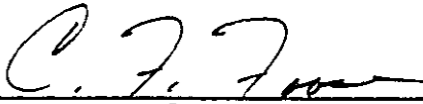
Possession of a narcotic while on duty is a serious offense warranting severe discipline. Due to the gravity of the offense

in conjunction with Claimant's short service as well as his failure to report to duty on February 16, 1984, this Board must uphold the disciplinary penalty.

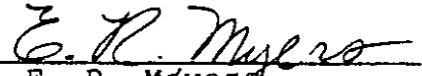
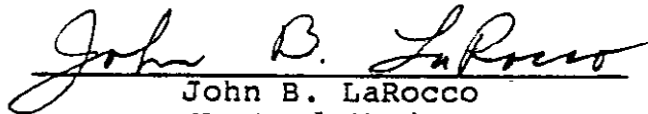
AWARD AND ORDER

Claim denied.

DATED: January 8, 1986



C. F. Foose
Employes' Member


E. R. Meyers
Carrier Member
John B. LaRocco
Neutral Member