

PUBLIC LAW BOARD NO. 3241

In the Matter of:)	National Mediation Board
)	Administrator
BROTHERHOOD OF MAINTENANCE OF)	
WAY EMPLOYEES,)	
)	
Organization,)	
and)	
)	
UNION PACIFIC RAILROAD)	Case No. 60
COMPANY,)	Award No. 60
)	
Carrier.)	

Hearing Date: May 7, 1996
Hearing Location: Sacramento, California
Date of Award: July 22, 1996

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 provisions of the current Agreement when it dismissed Engineer Pile Driver J. S. Craven. 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 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.

On November 21, 1993, the Carrier notified Claimant that it was convening an investigation to determine if Claimant had used an illegal drug in violation of Rule G. More specifically, the Carrier charged that Claimant's urine tested positive for the opiate metabolite. Following the investigation held on January 4, 1994, the Carrier found that Claimant had committed the charged offense and it dismissed him from service.

Claimant's representative properly filed a claim appealing Claimant's dismissal on February 26, 1994. The record reveals that the Carrier never denied the appeal. The Organization now petitions this Board to summarily sustain the claim as presented on the property.

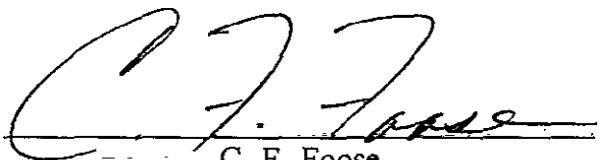
In Award No. 59, this Board upheld Claimant's dismissal for improperly tampering with his urine specimen that he was obligated to provide because Claimant had been properly placed in the Carrier's follow up drug testing program. Our decision in Award No. 59 rendered moot any remedy that might have been otherwise appropriate. Stated differently, even if the Carrier violated the time limits, which would necessitate sustaining the claim as presented, this Board could not reinstate Claimant or order a monetary remedy since Claimant is permanently dismissed from service as a result of the discipline assessed against him for committing dishonesty.

Since this case is moot, we must dismiss this claim.

AWARD AND ORDER

Claim dismissed.

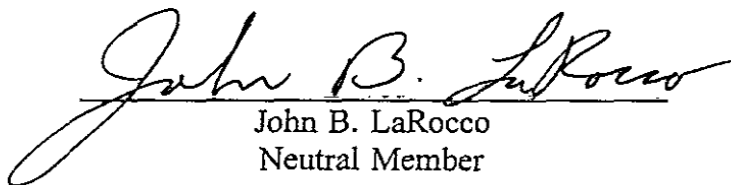
Dated: July 22, 1996



C. F. Foose
Employees' Member



D. A. Ring
Carrier Member



John B. LaRocco
Neutral Member