

PUBLIC LAW BOARD NO. 3241

|                                    |   |                          |
|------------------------------------|---|--------------------------|
| In the Matter of:                  | ) | National Mediation Board |
|                                    | ) | Administrator            |
| BROTHERHOOD OF MAINTENANCE OF      | ) |                          |
| WAY EMPLOYES,                      | ) |                          |
|                                    | ) |                          |
| Organization,                      | ) |                          |
| and                                | ) |                          |
|                                    | ) |                          |
| UNION PACIFIC RAILROAD COMPANY     | ) | Case No. 64              |
| (former Western Pacific Railroad), | ) | Award No. 64             |
|                                    | ) |                          |
| Carrier.                           | ) |                          |

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Hearing Date: November 18, 1997  
Hearing Location: Sacramento, California  
Date of Award: February 5,, 1998

MEMBERS OF THE BOARD

Employees' Member: Rick Wehrli  
Carrier Member: D. A. Ring  
Neutral Member: John B. LaRocco

ORGANIZATION'S STATEMENT OF THE CLAIM

1. That the Carrier violated the Agreement when it erroneously issued Road Way Equipment Operator R. L. Rainwater a 30 day suspension. Said action being an excessive, unduly harsh and in abuse of discretion.
2. That the Carrier 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. (930434)

**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.

Following an investigation held on July 8, 1995, the Carrier assessed Claimant a Level 2 Upgrade for allegedly violating Carrier Rules 1.1.4, 1.13 and 1.19. In essence, the Carrier determined that Claimant had unsafely operated defective equipment and had not reported the defects to the proper authority.

At the investigation, two laborers on Gang 7235 observed Claimant, the Gang Foreman, adjusting the carburetor on a rail saw on May 19, 1995. One laborer saw Claimant break the post that holds the air cleaner in place. Later, another laborer saw the Foreman using the saw to cut rail on the Reno branch. The air filter was not attached to the saw.

When the gang tried to use the saw on June 22, it seized up. After examining the saw, a Machinist concluded that the malfunction was caused by the absence of the air cleaner. The machinist confirmed that the studs that hold the air cleaner in place were broken. Other workers informed the Machinist that Foreman broke a post while he was trying to tighten the air cleaner.

Claimant denied breaking the saw however, he acknowledged that he adjusted the carburetor on May 19, 1995.

The Carrier submitted substantial evidence that Claimant improperly operated the saw without an air cleaner. Despite Claimant's denials, the Hearing Officer could credit the testimony of the laborers on the gang who observed the Foreman accidentally break the air cleaner post while

he was reconnecting the air filter after adjusting the carburetor. Instead of operating the saw without an air cleaner, the Foreman should have reported the damage so the rail saw could be fixed. As a result of running the saw without an air cleaner, the saw seized up.

While the record contains sufficient evidence that Claimant negligently failed to maintain the equipment under his control, the record does not reflect a serious safety violation. There is no evidence in the record that operating the rail saw without an air cleaner endangered the Foreman or the gang members. Even though there was not a serious safety violation, Claimant deserves some discipline for neglect of duty.

Therefore, this Board we will reduce the discipline to a Level 1 Upgrade.

**AWARD AND ORDER**

Claim sustained to the extent consistent with our findings. The Carrier shall reduce the discipline from a Level 2 Upgrade to a Level 1 Upgrade and Claimant's personal record shall be revised to reflect that he received a Level 1 Upgrade. The Carrier shall comply with this Award within 30 days of the date stated below.

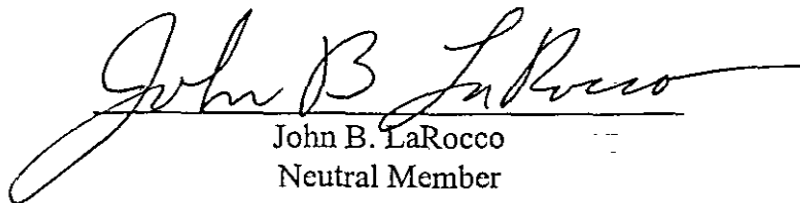
Dated: February 5, 1998



Rick Wehrli  
Employees' Member



D. A. King  
Carrier Member



John B. LaRocco  
Neutral Member