

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. 66
(former Western Pacific Railroad),)	Award No. 66
)	
Carrier.)	
)	

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 provisions of the current Agreement when it dismissed Laborer F. G. Franco. 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. (950581)

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 April 12, 1995, the Carrier sent Claimant, a Laborer on Gang 7301, a certified letter, return receipt requested. In the letter, the Carrier informed Claimant that, since he had been absent from Gang 7301 without proper authority since March 20, 1995, he had forfeited his seniority.

On May 9, 1995, the Organization's General Chairman, on behalf of Claimant, requested a Rule 20 hearing. Thereafter, pursuant to a May 12, 1995 notice, the Carrier scheduled a Rule 20 hearing for May 19, 1995.

At the hearing, the Manager of Track testified that the Carrier's attendance records showed that Claimant was absent without authority on March 20 and 21 and then from March 23 to April 12, 1995. On March 22, Claimant was permissibly absent due to personal business. When Claimant called the Gang Supervisor on March 21, to seek permission to be off on March 22, Claimant promised the Gang Supervisor that he would return to work on March 23. Claimant failed to fulfill his promise. However, he called the Gang Supervisor and requested that he be able to return to work the following Monday (March 27, 1995). Again, Claimant did not return to work on March 27, but sometime during the next week, he called the Gang Supervisor and he again promised to come to work by the next Monday (April 3). Claimant did not show up on April 3 which propelled the Carrier to send the April 12, 1995 certified letter.

At the hearing, Claimant related that he was absent for personal problems. Claimant was depressed and was having difficulty fighting his drinking problem.

Following the hearing, the Carrier dismissed Claimant from service.

At the onset, the Organization argues that the Carrier violated Rule 20 because the May 12, 1995 notice did not charge Grievant with any rules violation or apprise him of the charges. This Board previously addressed this argument in Award No. 65. We find that the Carrier complied with Rule 20 for the reasons more fully set forth in Award No. 65.

The record reflects that the Carrier had urged Claimant to seek treatment through the Employee Assistance Program (EAP) before his drinking problem affected his ability to regularly report to work. A few months before this incident, the Carrier allowed Claimant to take vacation so that he could be treated for alcoholism. Unfortunately, Claimant lost self-control and let his problem deteriorate to the point that it caused him to be continuously absent from work from March 20, 1995 to April 12, 1995 except for the one day when the Gang Supervisor gave him permission to be off work.

Three times Claimant promised the Supervisor that he would return to work. Each time, Claimant broke his promise. Thus, Claimant manifested a course of conduct that demonstrates that he is an undependable employee.

Lastly, the record reflects that Claimant voluntarily sought help for his drinking problem subsequent to receipt of the April 12, 1995 certified letter. Inasmuch as Claimant had ample opportunity to seek treatment earlier, we cannot consider his belated decision to address his drinking problem, while laudatory, as a mitigating circumstance in this case.

Based on Claimant's poor prior record as well as the length of his continuous absence without authority herein, this Board cannot disturb the assessed discipline.

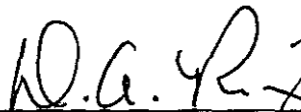
AWARD AND ORDER

Claim denied.

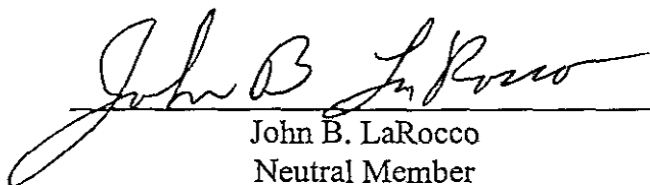
Dated: February 5, 1998



Rick Wehrli
Employees' Member



D. A. Ring
Carrier Member



John B. LaRocco
Neutral Member