

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. 70
(former Western Pacific Railroad),	)	Award No. 70
	)	
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 provisions of the current Agreement when it assessed Laborer Roy E. Haile with a Level 5 Dismissal. 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. (960150)

**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.

Pursuant to proper notice dated August 24, 1995, the Carrier charged Claimant, a Laborer, with engaging in a physical altercation with a Welder while on duty and on Carrier property on August 22, 1995.

In Award No. 68, this Board set forth the relevant facts adduced at a separate hearing where the Welder was the charged employee. Many of the facts set forth in Award No. 68 are found in this record. Like the Welder, Claimant admitted fighting and contended that, during the fight, he was only trying to protect himself. In addition, Claimant asserted that he started to leave the office before the fight but he returned to confront the Welder because the Welder called Claimant some insulting names.

Following the investigation, the Carrier dismissed Claimant from service.

For the reasons set forth in Award No. 68, the record contains substantial evidence that Claimant fought with the Welder. As we discussed in Award No. 68, identifying the provoking party, if any, is irrelevant because both men aggressively wrestled each other to the ground. Nevertheless, the record in this case indicates that Claimant had at least one opportunity to avoid any physical altercation. Before the fight, he almost left the office. He should have continued out the

door.<sup>1</sup> Name calling is hardly a justification for returning to the office to resume an argument which escalated to fisticuffs.

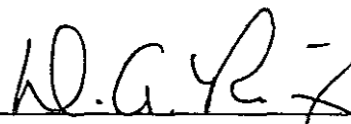
Employees must resolve their differences by peaceful, non-violent means. Claimant has a hair trigger temper which he cannot control. In addition, Claimant worked for the Carrier for only one year.<sup>2</sup> Due to his short length of service coupled with the seriousness of his offense, we must affirm the assessed discipline.

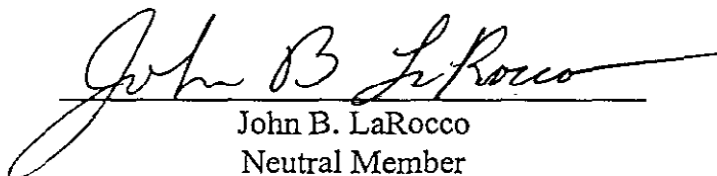
**AWARD AND ORDER**

Claim denied.

Dated: February 5, 1998

  
Rick Wehrli  
Employees' Member

  
D. A. Ring  
Carrier Member

  
John B. LaRocco  
Neutral Member

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<sup>1</sup> Thus, even if Claimant was not the provocateur, he had an opportunity to retreat and effectively diffuse the tense situation.

<sup>2</sup> These factors distinguish Claimant from the Welder.