

PUBLIC LAW BOARD NO. 3241

In the Matter of:)	National Mediation Board
)	Administrator
BROTHERHOOD OF MAINTENANCE OF)	
WAY EMPLOYEES,)	
)	
Organization,)	
and)	
)	
UNION PACIFIC RAILROAD COMPANY)	Case No. 73
(former Western Pacific Railroad),)	Award No. 73
)	
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 assessed Trackmen Mr. H. Dooline and Mr. R. Holiday with a Level 5 permanent dismissal. Said action being excessive, unduly harsh and in abuse of discretion.
2. That the Carrier now reinstate Claimants to their former Carrier positions with seniority and all other rights restored unimpaired, with pay for all loss suffered and their record cleared of all charges.
(960400)

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 Carrier dismissed Claimants, two Laborers on Gang 9064, for allegedly being absent without proper authority on December 10, 1995.

At the hearing held on January 5, 1996, both Claimants admitted that they did not report to work on December 10, 1995, because they overslept. In addition, Claimants asserted that they did not call the Carrier to report their absence because they did not awaken until 8:00 a.m. and they claimed that the General Foreman had instructed them not to call the Carrier after 7:30 a.m., the shift starting time.

The General Foreman vigorously denied that he had issued such an instruction. On the contrary, he testified and brought forward supporting documentation that both employees knew that they were to page the General Foreman to report their absences regardless of the time.

Claimants offered a flimsy explanation for their absence and thus, the Carrier presented substantial evidence that they were absent without proper authority on December 10, 1995. Both Claimants aggravated the offense by disregarding explicit instructions to call the Carrier to mark off absent.

The Carrier predicated its decision to dismiss both employees not only on this incident, but also on their prior atrocious attendance records. Both Claimants had been absent without authority

on at least two occasions during the last 18 months. They have demonstrated they lack the capacity to punctually and regularly report to work.

The Carrier properly applied the principle of progressive discipline and thus, we do not find any reason to disturb the assessed discipline in this case.

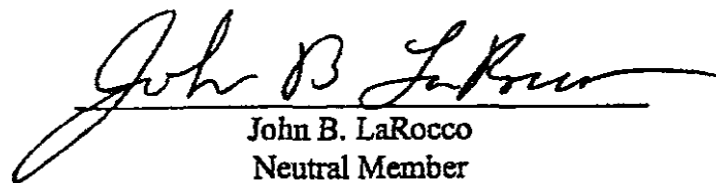
AWARD AND ORDER

Claims denied.

Dated: February 5, 1998


Rick Wehrli
Employees' Member


D. A. King
Carrier Member


John B. LaRocco
Neutral Member