

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. 76
(former Western Pacific Railroad),	)	Award No. 76
	)	
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 a Level 3 discipline (5 day actual suspension) to Track Laborer Kendal H. Davis. 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. (1016553)

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 convened a hearing on January 31, 1996, to determine if Claimant, a Laborer, had failed to follow his Foreman's instructions to wait in the office on January 18, 1996.

During the January 18, 1996 safety meeting held in Stockton, California, the Manager of Track Maintenance informed the Foreman of the Tracy section that the section gang was need at Oakland Yard by 4:00 p.m. to repair track following a derailment. The Section Foreman informed his two Laborers (one of which was Claimant) that they would be traveling during the afternoon to the derailment site.

Before going to Oakland, the Foreman (accompanied by the other Laborer) had to retrieve their truck from Great Valley Ford. Before leaving the office, the Foreman told Claimant to wait for him in the office.¹ Claimant acknowledged receiving the instruction.

It took the Foreman and the other Laborer approximately one hour to go to Great Valley Ford and return with the truck. When they arrived back at the office, Claimant was not present. They went to another jumping off point (a trailer in the Yard) looking for Claimant. The Foreman and the Laborer spent approximately one-half hour searching for Claimant before proceeding to Oakland without Claimant.

¹ The Foreman did not take Claimant with him to pick up the truck because Laborers were selecting their vacation days and the Foreman wanted Claimant to have an opportunity to chose his vacation.

Claimant testified that he waited in the office a long time. He did not understand why it was taking the Foreman so long to return from the repair facility with the truck. Claimant thought that the Foreman had gone to Calaveras Garage which was very close to the office. Claimant expected the Foreman to return in 15 minutes.

While he was not entirely clear, Claimant testified that he went to the garage looking for the Foreman, then went home to get his rain gear before returning to the trailer in the Yard.² Shortly after 4:00 p.m., Claimant left the property and went home.

Following the hearing, the Carrier determined that Claimant had failed to follow proper instructions and left his duty area without authority. The Carrier assessed Claimant a Level 2 Upgrade. Because Claimant was already at Level 1, the Level 2 placed him at Level 3, resulting in a five-day suspension.

The Carrier presented substantial evidence that Claimant committed the charged offense. Claimant, himself, admitted that he did not comply with the Foreman's clear instruction. Instead of remaining in the office after signing up for his vacation, Claimant admits that he left and went to several locations. Once he left the office, Claimant made it difficult for the Foreman to find him.

Moreover, as an appellate body, this Board may not resolve factual conflicts or make credibility determinations. The Hearing Officer could credit the Foreman and the other Laborer's rendition over Claimant's testimony. The Foreman and the Laborer related that they spent one-half hour searching for Claimant and they checked the Yard trailer as well as the office. If, as Claimant

² It was a rainy, windy day and Claimant did not have his rain gear with him.

asserted, he was only off the property for a short period of time to get his rain gear and go Calaveras Garage, it is likely that the Foreman would have found him at the trailer.

More importantly, before leaving the office, Claimant could have notified the Manager of Track Maintenance as to his whereabouts.³ If he had done so, the Manager could have conveyed to the Foreman where Claimant had gone.

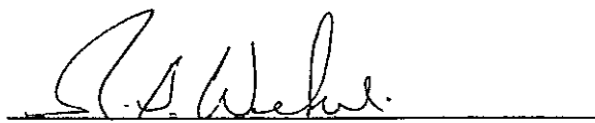
Therefore, the record contains substantial evidence that Claimant permanently left the property well before 4:00 p.m.

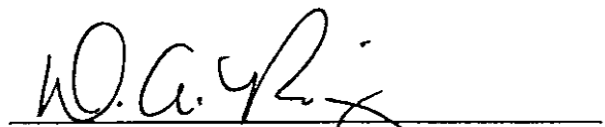
Assessing Claimant with a Level 2 Upgrade was consistent with his prior disciplinary record. The Carrier properly imposed progressive discipline.

AWARD AND ORDER

Claim denied.

Dated: February 5, 1998


Rick Wehrli
Employees' Member


D. A. Ring
Carrier Member


John B. LaRocco
Neutral Member

³ Claimant could also have left a note for the Foreman.