

PUBLIC LAW BOARD NO. 2439

Award No. 85
Case No. 85

PARTIES
TO
DISPUTE

Southern Pacific Transportation Company
and
Brotherhood of Maintenance of Way Employees

STATEMENT
OF CLAIM

- "1. That the Carrier violated the agreement when it assessed sixty (60) demerits from the personal records of Water Service Foreman, Mr. J. O. Searle, and Composite Mechanic F. M. Silva, said action being in abuse of discretion and totally unwarranted.
2. Claimants' records now be cleared of all charges and the demerits expunged from their disciplinary records."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

On November 15, 1983, claimants together with other employees were installing a fire line. In the course of installing that line, Claimant Silva, at the direction of Foreman Searle, entered the trench which was being prepared and, at about 12:30 P.M., the trench caved in, trapping Claimant Silva and injuring him. He was required to go to a hospital and stay overnight as a result of that accident. Following investigation, Mr. Searle was found guilty of violating Carrier's rules since he did not take responsibility for the safety of Mr. Silva and did not see that Mr. Silva took the proper precautions and allowed him to enter a ditch which was not safe. For that reason, Searle was assessed sixty demerits. In addition, Mr. Silva was found guilty of being careless with respect to the safety of himself in violation of Carrier rules and was also assessed sixty demerits because of the particular incident.

Carrier's instructions had been that in preparing trenches such as this, the normal routine was that either the ditch would be shored or the slope at the side of the ditch would be tapered to prevent the possibility of accidents such as that which occurred. The record reveals further that there was no shoring materials available at the time of the accident. It is further clear from the evidence that there had been a similar accident approximately one week earlier and the Foreman, Searle, had requested shoring material but it had not been furnished. There was also evidence that for the first time immediately following the accident on the next day shoring material was provided for the completion of the job. There is also testimony that the Utility Supervisor who was over the two men involved in this matter had inspected the trench and indicated that they should proceed, in spite of the fact that the slope was straight and that there was no shoring. Further, the record indicates that no sloping was possible since the side of the trench was along a fence.

From the entire record, it is clear that there was an injury incurred and that the foreman was present at the time and that the material necessary to assure a safe operation was not present until the day following the accident. Based on the entire record, there is serious question as to whether, indeed, there was any violation of Carrier's rules by the two claimants. Claimant Searle had to obey the instructions of his supervisor and his supervisor, in turn, had requested materials and was instructed to carry on by his supervisor without such materials being present. Under all the circumstances it is clear that Carrier has not borne its burden of proof in establishing that the rules were violated, warranting discipline. The claim must be sustained.

AWARD


Claim sustained.

ORDER

Carrier will comply with the award herein within thirty (30) days from the date hereof.


I. M. Lieberman, Neutral-Chairman


L. C. Scherling, Carrier Member


C. Foose, Employee Member

San Francisco, California
August **21**, 1985