

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - S. R. Cohen
Award No. 109
Case No. 109

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Southern Pacific Transportation Company (Western
Lines)

STATEMENT
OF CLAIM

That the Carrier's decision to assess Claimant thirty (30) demerits was excessive, unduly harsh and in abuse of discretion and in violation of the terms and provisions of the current Collective Bargaining Agreement.

That because of the Carrier's failure to prove and support the charges by introduction of substantial bona fide evidence, that Carrier now be required to reinstate and compensate Claimant for any and all loss of earnings suffered, and tht the charges be removed from his record.

FINDINGS

Upon reviewing the record, as submitted, I find that the Parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Special Board of Adjustment is duly constituted and has jurisdiction of the Parties and the subject matter; with this arbitrator being sole signatory.

The Carrier notified the Claimant on July 9, 1990, that the evidence adduced at a formal investigation held at Eugene, Oregon on June 28, 1990 established his responsibility in

violating Rule I and Rule 607, on May 11, 1990. The charges resulted from an incident whereby the Claimant, who was working as a Compressor Operator, had gathered and then placed several tamping guns against a compressor which was still operational. As a result of the vibrations of the machine, one of the tamping guns weighing approximately 40-50 pounds, slid and fell on the Claimant's foot, causing an injury. The rules the Claimant was charged with violating read as follows:

Rule I: Employees must exercise care to prevent injury to themselves or others. They must be alert and attentive at all times when performing their duties and plan their work to avoid injury.

Rule 607: CONDUCT: Employees must not be:

(1) Careless of the safety of themselves or others:
1e. (2) Negligent;

Any act of hostility, misconduct or willful disregard or negligence affecting the interests of the Company is sufficient cause for dismissal and must be reported.

Indifference to duty, or to the performance of duty, will not be condoned.

The Claimant was issued thirty (30) demerits.

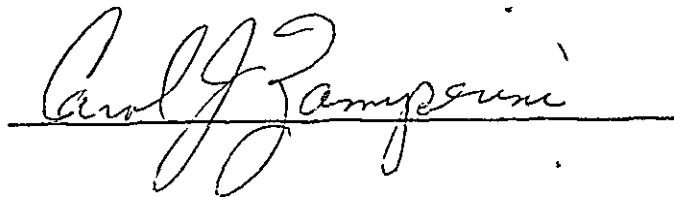
The Claimant was responsible for collecting the tamping guns being used not only by himself, but other employees. The other part of his duties included shutting down the compressor. Therefore he was well aware the machine was still running when he leaned the guns against it. The Claimant should have been aware of how unstable the guns would be against a vibrating compressor, particularly considering their weight. He has to bear the responsibility for lacking the necessary foresight in

handling the equipment.

The actions of the Claimant do not constitute the most serious of rule violations. None-the-less, the lack of foresight demonstrated could have left the Employee with a serious injury. Since his Employment Record shows he has been counseled previously about Rule 607, the penalty issued by the Carrier in this case is appropriate.

AWARD

The Claim is denied.

A handwritten signature in cursive script, reading "Carol J. Zamperini", is written over a horizontal line.

Carol J. Zamperini
Impartial Neutral

Submitted:

February 26, 1991