

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - J. O. Ramirez
Award No. 110
Case No. 110

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

That the Carrier's decision to assess Claimant forty (40) 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 remove the forty (40) demerits and compensate Claimant for any and all loss of earnings suffered, and that the charges be removed from his record.

FINDINGS

Upon reviewing the record, as submitted, I find that the Parties herein are Carrier and Employes 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.

On August 3, 1990, the Claimant received notification that the Carrier believed evidence adduced at a formal investigation held on July 18, 1990, determined he was responsible for

violating Rules 607, General Rule A and General Rule B of the Rules and Regulations for the Government of Maintenance of Way and Structures of the Southern Pacific Transportation Company. The charges stemmed from an equipment accident which occurred on June 27, 1990. The Claimant was assessed forty (40) demerits. The rules allegedly violated read as follows:

Rule 607: CONDUCT: Employees must not be:

(1) Careless of the safety of themselves or others;. . . .

Rule A: Safety is of the first importance in the discharge of duty.

Obedience to the rules is essential to safety and to remaining in service.

The service demands the faithful, intelligent and courteous discharge of duty.

Rule B:If in doubt as to the meaning of any rule or instruction, employees must apply to their supervisor for an explanation. . . .

On the day of the accident, the Claimant was assigned to operate a Ballast Regulator. At one point it became obvious the machine was spraying hydraulic fluid. Since a train was scheduled to use the track, the track had to be cleared. Thereupon, the mechanic was summoned and he disconnected the hydraulic pumps leaving the machine with two backup braking systems which would be operative, as long as, the machine was kept running. The mechanic advised the Foreman and the Claimant of this fact. Since the machine was free moving at this point, the decision was made to push the Ballast Regulator into a siding. As the machine was being pushed, it reached a slight downgrade. As it picked up speed, the Claimant attempted to

apply the brakes. According to his testimony and his exclamations on the day of the accident the brakes would not work. As the Ballast Regulator moved dangerously close to a parked Tamper, the Foreman shouted to the Claimant to jump. After the Claimant jumped clear of the machine, it ran into the Tamper. There was \$10,000. worth of damage done to the two machines.

Both the Foreman and the Claimant explained they were well aware of employees who had been seriously injured while inside machines which had been involved in accidents. It was with this in mind that the Foreman advised the Employee to jump.

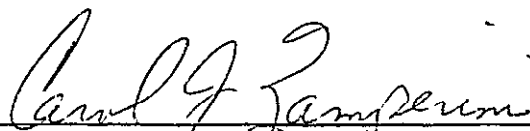
If anyone had a desire to stop the Ballast Regulator on the day of the accident, it was the Claimant. He was the one in the machine as it accelerated toward the Tamper. It is unreasonable not to believe his testimony that the air brakes did not function properly. The fact they seemed to apply as the Ballast Regulator lay against the Tamper is insufficient to prove the brakes worked while descending the grade. The investigation should have attempted to replicate the incident, it did not. The conclusions derived from the test conducted by the Mechanic and Supervisor at the scene of the accident cannot be given much credence. It is hard to tell whether the Claimant had sufficient time to pull the emergency brake throttle. Certainly at that point in time, it was a judgment call and hardly subject to second guessing.

The apparent mistake made by the Claimant, and, all of the accused for that matter, is the failure to chain the faulty

Ballast Regulator to the other Ballast Regulator. Even though one could say the bulk of this blame should be placed on the Mechanic and the Foreman, it is not unreasonable for the Carrier to expect all machine operators to demonstrate an awareness of the possible dangers in operating a malfunctioning machine. Therefore, even if the Foreman and Mechanic failed to take the proper precautions, the Operator should have given thought to doing so. The issuance of forty (40) demerits on its face is reasonable. However, in view of the excellent employment record of the Claimant and the deficiencies in the investigation, any demerits resulting from this disciplinary action which remain on the Claimant's employment record will be expunged upon receipt of this Award.

AWARD

The Claim is denied except for the following: any demerits which resulted from this disciplinary action which remain on the Claimant's Employment Record will be expunged upon receipt of this Award.



Carol J. Zamperini
Impartial Neutral

Submitted:

February 25, 1991
Denver, Colorado