

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - D. L. Roberts
Award No. 111
Case No. 111

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 suspend Claimant for a period of two (2) working days 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 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.

The Claimant was notified, by letter, to be present at a formal Investigation to be held at the Plant Manager's Office in Eugene, Oregon, on Tuesday, August 7, 1990. The hearing was

postponed and was actually held on September 19, 1990. The purpose of the hearing was to determine the Claimant's responsibility in violating Rules H, 604, and 607 of the Chief Engineering Department form S-2292-E effective October, 1989 and Rule #1. The charges were based on an incident which occurred July 3, 1990, when the Claimant allegedly arrived at work late without proper safety equipment and left early without proper authority. The rules cited read as follows:

Rule H: Employees must wear proper clothing, including appropriate protective equipment, for work being performed. They must be courteous and orderly while on duty.

Rule 604: DUTY-REPORTING OR ABSENCE: Employees must report for duty at the designated time and place. They must devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties, or substitute others in their place without proper authority.

Continued failure by employees to protect their employment shall be sufficient cause for dismissal.

Rule 607: Indifference to duty, or to the performance of duty, will not be condoned.

Rule #1: PERSONAL PROTECTIVE EQUIPMENT:

A. Only approved personal protective equipment supplied by Company will be used while on duty.

B. Safety hats or caps and safety glasses with side shields furnished by the company must be worn while on duty where required.

C. Additional safety equipment must be used where conditions of the job require, and in accordance with instructions or direction by supervisor.

(From the Safe Work Practices for SP/SSW Employees in the Maintenance of Way Track

Department.

On the day of the incident, the claimant was assigned as a Welder's helper on Welding Gang 49, Oakridge. He was scheduled to be at work at 7:00 a.m. and work until 5:30 p.m..

The Claimant did call in on the day in question to report he would be late getting to work. Since the Gang was working some miles from the meeting place, the supervisor asked the Welder to wait until 9:00 a.m. for the Claimant and drive him to the job site. The Welder waited. He saw the Grievant drive by around 9:15 a.m.. It appeared the Claimant saw him as well. The Welder gased the truck and went on out to the job site. The Claimant showed up around 12:30 p.m..

The two had words concerning the fact the Claimant was late and did not have his safety equipment. The Claimant contended he had gone to the Roadmaster Office to try to get a hold of someone and could not. He said the employee who left him into the office had to leave and locked the office door with the Claimant's safety equipment left inside. The Claimant further testified he remained at the office because he knew employees were not allowed to drive personal vehicles to the job site.

After reviewing the evidence from the hearing the Carrier determined the Claimant had violated the cited Rules. He was suspended for two (2) days, October 24 and 25, 1990.

The Claimant's testimony is simply not credible. He would have this Board believe he just sat for nearly three hours before he went to the job site in his own vehicle. If he drove to the job site at that point, there is no earthly reason he could not have done so three hours earlier.

We found the Claimant's story inconsistent. He did not seem to remember the chronology of events on the day in

question.

Besides, the Claimant knew he had to have permission to leave early without performing any work. It's irrelevant that he was not paid for the day. The rule infraction isn't any less serious because he wasn't paid for being AWOL. If the Claimant was being provoked by the Welder he should have discussed the matter with the Roadmaster and/or the Union. It is well established in labor arbitration cases, that self-help is not acceptable. Even though an employee is not expected to tolerate verbal abuse, the fact the Claimant did not raise the issue on the day it happened discredits his subsequent story.

AWARD

The claim is denied.



Carol G. Zamperini
Impartial Arbitrator

Submitted;

Denver, Colorado
June 13, 1991