

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - D. L. Harrison
Award No. 112
Case No. 112

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 fifteen (15) 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.

On October 8, 1990, the Claimant was notified to be present at a formal investigation to be held at the office of the District Engineer, Mr. J. C. Mahon, Roseville, California, on

October 12, 1990 for the purpose of determining whether or not he failed to inspect a tamper before moving it from a spur to the main line. The cited incident occurred on October 1, 1990 and resulted in damage to the tamper. In the notice, the Claimant was charged with a violation of Rule 2.13.3 - Work Equipment, which reads as follows:

Rule 2.13.3: WORK EQUIPMENT:

Equipment shall not be operated in a manner to endanger life, limb or property. No equipment shall be set in motion until it is known that the way is clear.

Mr. D. L. Harrison, the Claimant, was a Ballast Tamper Operator headquartered in Marysville, CA. He was employed on June 5, 1989 and promoted to Ballast Operator on May 1, 1990. There were at least two tampers the Claimant worked with; one a Mark I tamper, the other a Mark III. On the day the equipment was damaged, he was operating a Mark I, 269RB. According to the inquiry after the accident, the Claimant failed to make sure the jack attachment was up and locked into place. As a result, the jack slipped down and bent the front part of the tamper and the shadow board. Allegedly, the Claimant failed to check to see that the jack was held into place by a lock pin. The Claimant testified that he believed the jack was spring loaded and as long as it was up he felt it was locked into place.

According to the testimony presented during the investigation, everyone credits the Claimant with being a very good employee. Although he had previously been issued a letter when he was observed going too fast through a crossing, his record contained no other disciplinary actions. Therefore it

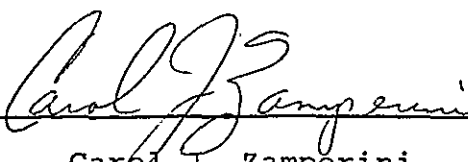
would appear everyone believes this employe has and will continue to have value to the Carrier. Consequently, it is necessary to examine not only whether the Claimant failed to properly secure the jack, but whether the penalty issued was appropriate.

As this Arbitrator has indicated time and again, the very premise of progressive discipline requires that unless a rule violation is so serious as to justify discharge for a first offense, such as insubordination, theft, and Rule G violations, discipline should be administered based on what would be necessary to convince the employe involved to modify his/her behavior. There is no evidence, nor do I believe, the Claimant in this case, would not have responded to a more lenient form of discipline. Although a fifteen (15) day suspension may be very reasonable in some instances, it is questionable whether it is necessary in the instant case. Regardless, of the damage done, it is necessary to review the actual failing of the Claimant to determine the appropriate punishment. If we take into account the Claimant was actually engaged in on the job training, as described in the testimony of Carrier witnesses, then we should consider his error as more a decision of poor judgment rather than one of negligence. For that reason, progressive discipline calls for a less severe penalty. The Employe has demonstrated his worth to the Carrier and has been trained as a tamper operator. It is simply not in the best interest of either the Carrier or the Employe to demoralize him by issuing a harsher penalty than necessary. It is more important to convince him to

modify his behavior in order to enhance his value to the Company. If the Employee then fails to recognize the necessity of becoming more meticulous in his work habits, he must appreciate the possibility of more intense forms of discipline, including discharge.

AWARD

The fifteen (15) day suspension is to be reduced to a five (5) day suspension.


Carol J. Zamperini
Impartial Arbitrator

Submitted:

February 28, 1991
Denver, Colorado