

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - R. M. Bullen  
Award No. 115  
Case No. 115

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 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 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.

On October 2, 1990, the Claimant received notice to appear for a formal investigation on October 12, 1990 to determine if he had violated Rule 2.13.8, of the Chief Engineers Instruction.

for the Maintenance of Way and Structures and Engineering Department Employees, form S-2292-E, effective October, 1989, which reads:

Rule 2.13.8: When Equipment is left unattended:

- (a) Motor must be stopped
- (c) Parking or handbrake must be securely set.
- (h) On grades, wheels must be securely blocked and chained to rail.
- (j) Work equipment with booms, plows, mowers, buckets and other attachments that are capable of being raised or lowered hydraulically or mechanically, must be left with attachments lowered or safely secured.

The hearing was eventually held on October 12, 1990. Following same, the Carrier reviewed the evidence, found it convincing and suspended the Claimant for fifteen (15) days.

On the day of the incident, the Claimant went on duty at 7:00 a.m. at O'Brien and off duty at 3:00 p.m. at Lakehead. His assignment was to operate a Compactor. At one point, near MP 296 he stopped the machine using the travel brake. He disembarked to go to the bathroom. At this time, he also walked back to check on the Ballast Regulator working the track behind. When he turned back toward his machine, he realized the brakes had not held and his machine was traveling, unoccupied, down the track. He attempted to catch-up with it by foot. When he realized he could not, he returned to the Ballast Regulator and the Operator took him first to the third machine working in the area. From that machine they called the Dispatcher to alert him to the runaway Compactor. They then chased the machine.

Eventually, the machine was tracked down. It suffered a dent, but otherwise was still operational. No other damage was done.

As part of the explanation for the runaway, the Claimant urges that the brakes were not working properly. He did not make this claim on the day of the accident. It is impossible to determine whether his claim has any merit, since the brakes were not checked on that day. This was an oversight by the supervisor in charge of the investigation. The check should have been part of a thorough investigation to determine the reason for the accident, as well as, determining the culpability of the Claimant.

Unfortunately, most of us are blessed with hindsight, but, little foresight. The Claimant initially thought his brake application was enough to hold the machine in place. Obviously it had stopped. However, his analysis of the situation was incomplete. If nothing else, he should have checked the air pressure to be sure the brake was holding before he walked away from the machine.

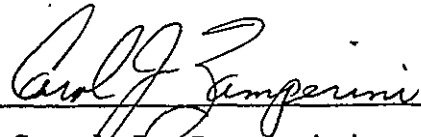
In view of all of these facts, the question before this Board is whether or not the Claimant warrants discipline. If he does, what discipline is appropriate in view of all factors.

The Claimant worked for the Carrier for 14.5 years at the time of the incident. His employment record indicates he was involved in a truck accident. Other than that, he has what appears to be an exemplary record. The only penalty issued for the truck accident was thirty (30) demerits. If progressive

discipline is taken into account here, along with other matters previously discussed, it seems to this Board, a fifteen (15) day suspension is excessive.

AWARD

The claim is sustained in part; the fifteen (15) day suspension is to be changed to a five (5) day suspension. The Claimant is to be reimbursed the difference between what he lost during his fifteen (15) day suspension and what he would have lost if he had been issued the five (5) day suspension.



Carol J. Zamperini  
Impartial Arbitrator

Submitted:

June 14, 1990  
Denver, Colorado