

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - J. Halos
Award No. 118
Case No. 118

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 thirteen (13) 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 Employee 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.

After a formal hearing held on December 18, 1990, the Carrier notified the Claimant that the evidence adduced at the

hearing established his responsibility in failing to properly load a Hertz rental backhoe onto a tilt trailer on December 7, 1990. As a result, while in transit the backhoe struck a bridge structure causing damage to the backhoe, as well as, to a passing school bus. It was determined he violated Rule 607, that portion which reads:

Rule 607: CONDUCT: Employees must not be:
1) Careless of the safety of themselves
or others;
2) Negligent;. . . .

The evidence presented at the hearing, revealed that the Claimant had been employed by the Carrier for approximately one year and six months at the time of the accident. During the previous year he had been training to be a backhoe operator. On the day in question, he had been qualified for two or three months. He had little experience loading and unloading equipment onto tilt-bed trailers. However, he loaded the backhoe at the end of the shift, on that particular day. He did not measure the height of the backhoe once it was loaded onto the trailer, nor did the truck driver.

Consequently, neither were aware that the elbow of the back bucket was too high to pass under the railroad bridge they encountered on their return trip. The backhoe, by most accounts, hit the bridge structure damaging the elbow and forcing the backhoe to swerve on the trailer. This in turn caused the front bucket of the backhoe to hit a school bus, causing substantial damage.

By the Claimant's own admission, he did not know a great deal about the backhoe he loaded onto the trailer. He had

AWARD

The claim is sustained in part, the thirteen (13) day suspension is to be reduced to a five (5) day suspension. The Claimant is to be reimbursed any wages and/or benefits lost in excess of this five (5) day suspension.



Carol J. Zamperini
Impartial Arbitrator

Submitted:

September 17, 1991
Denver, Colorado