

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - G. Vasquez
Award No. 119
Case No. 119

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 sixty (60) 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.

By letter dated December 10, 1990, the Claimant was notified to be present at a formal Investigation to be held on

December 18, 1990, to determine if he was responsible for violating Rules 607 of the Rules and Instructions for the Maintenance of Way and Structures and Engineering and Care of Automotive Equipment, Rule 13, those sections reading:

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

Rule 13, Loading of Trailer Equipment:

Drivers must assure themselves load is properly secured to prevent shifting or loss, and must comply with height, weight and width requirements.

The charges stemmed from an incident which occurred on December 7, 1990. On that day, the Claimant was the driver of a dump truck which pulled a tilt-bed trailer carrying a Hertz rental backhoe. He was returning the backhoe at the end of the shift. While enroute, it appeared the elbow of the backhoe hit a railroad bridge at MP 419.43. The backhoe started coming off the trailer and in the process the front bucket hit a bus which was traveling in the left hand lane beside the equipment. The backhoe was also damaged in the accident.

After conducting the Investigation, the Carrier concluded that the driver had not taken the necessary precautions to assure the backhoe met the height restrictions after being loaded onto the trailer. The driver (Claimant), had measured the backhoe before driving it to the work site, but did not measure it after it was loaded for the return trip. Therefore the Carrier suspended the Claimant for sixty (60) days, December

8, 1990 through February 6, 1991.

The Carrier has certainly met its burden in proving that the Claimant was ultimately responsible for securing the backhoe onto the trailer and for making sure it met the height restrictions. Further, given the fact he was dismissed for a Rule G violation a year earlier, a sixty (60) day suspension, would appear on its face to be reasonable. After all, his failure to measure the backhoe allowed the equipment to be transported with the elbow too high. The result in this case was an accident that caused equipment damage, but could just as easily have caused serious injuries.

However, there are mitigating factors. For one thing, the Claimant was not a qualified backhoe operator and was not aware the arm of the backhoe could be extended. As a result, he believed the height of the backhoe would not change from the time he measured it in the morning, assuming it was loaded and secured in the same manner. He also testified with great candor, not only admitting he had not measured the height of the backhoe on the return trip, but also conceding it was ultimately his responsibility. Finally, there is no evidence the Claimant was in any way impaired.

Therefore, the Board does not believe the Claimant's dismissal for a Rule G violation should influence the discipline issued in this case. We believe the penalty should reflect progressive discipline. If the Claimant's entire record, including his tenure (13 years) is taken into consideration, along with the mitigating factors discussed above, we believe a

thirty (30) day suspension is more appropriate.

AWARD

The claim is sustained in part, the sixty (60) day suspension is to be reduced to a thirty (30) day suspension. The Claimant is to be reimbursed any wages and/or benefits lost in excess of the thirty (30) day suspension.

A handwritten signature in cursive script, appearing to read "Carol J. Zamperini", is written over a horizontal line.

Carol J. Zamperini
Impartial Arbitrator

Submitted:

September 16, 1991
Denver, Colorado