

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - R. L. Davis
Award No. 122
Case No. 122

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 five (5) 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 Friday, April 26, 1991, the Claimant was operating a Crane behind two track cars near Canary, Oregon. At

approximately 10:35 a.m., near MP 719.75, there was a collision involving his Crane, the track cars and a Hi-Rail Inspection vehicle. As a result of the accident, the Claimant was notified to attend an Investigation to be held on Thursday, May 9, 1991, to determine if he was responsible for violating the following Rules of the Rules and Regulations of the Maintenance of Way and Structures and Engineering Department, particularly those portions which read:

Rule 2.11.7, Maximum Speed governing movement of track cars:

Motor cars. . . .

(d) During darkness, stormy or foggy weather, or when from other causes visibility is obscured, or restricted to a short distance, speed must be reduced and cars operated only at a speed consistent with safe operation under the prevailing conditions. A constant and vigilant lookout must be maintained. All cars must stop proceeding over power operated switches or derails. Before moving around sharp curves, or through tunnels and snowsheds where view is obscured, flagman must be sent ahead for protection, if it cannot otherwise, be positively determined that the way is clear.

Hi-Rail Inspection Vehicles. . .

(3) When visibility is obscured or restricted to a short distance, speed must be reduced and cars operated only at a speed consistent with safe operation under the prevailing conditions. Cars must not be operated at speeds which would prevent stopping within one-half sight distance.

The hearing which was postponed, was held on May 16, 1991. The Carrier reviewed the evidence presented at the hearing and by letter dated June 5, 1991, advised the Claimant that the evidence, ". . . established your responsibility in connection with your failure to maintain constant and vigilant lookout, operate at a speed that would allow stopping within one half

sight distance and operate at a speed consistent with the safe operation under the prevailing conditions which resulted in the collision of Hi-Rail Inspection Vehicle and SPMW 4028 crane and two rail cars". He was suspended for a period of five (5) working days.

On the day in question, the Crew operating the Crane was sharing track time with two other crews, including the Hi-Rail Inspection Vehicle crew. Each crew was aware of the crews with whom they were sharing time. None of the crews communicated their particular location to the others.

At the time of the accident, it was raining hard, as it had been most of the day. Therefore, it is questionable the visibility was as good as it normally would have been. This disadvantage was coupled with the fact that the Crane and the Hi-Rail were on opposite ends of a curve coming towards each other. It was under these circumstances that the two vehicles were not able to stop short of each other and collided.

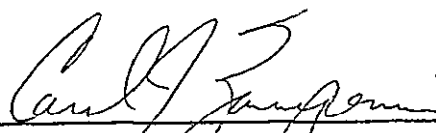
The Union is correct in arguing that there were factors which contributed to this accident, such as the lack of communication between the crews and the weather. However, that does not absolve the employees. If anything the employees must share the blame for one of those deficiencies. There was nothing to prevent them from communicating with each other, particularly in light of the weather conditions. Common sense would dictate that despite the fact there is no Rule or Regulation requiring such communication, there was nothing to prevent it. The crews knew they were sharing track time and had

an obligation to take steps to assure safe operations. Communicating with one another was one apparent step. The Claimant could just have easily transmitted his position, as could the other two crews.

Beyond that, testimony reveals that the weather was severe enough to warrant extreme caution in operating track equipment and controlling speed. It is obvious the vehicles involved in the collision were not operating at a speed which would allow them to stop within the restrictions of the Rules and Regulations. The Carrier is correct in admonishing the Claimant. This is not to say this Board believes the Claimant to be any more responsible than other crew members, but like other crew members he is, at least in part, responsible for what happened. We find the penalty issued in this case was for Just Cause.

AWARD

The claim is denied.



Carol J. Zamperini
Impartial Arbitrator

Submitted:

September 20, 1991
Denver, Colorado