

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - J. P. Gonzalez
Award No. 123
Case No. 123

Brotherhood of Maintenance of Way Employees
and

Southern Pacific Transportation Company (Western
Lines)

That the Carrier's decision to suspend Claimant from its service 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 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.

On February 15, 1991, the Claimant was notified to attend a Formal Investigation at the office of Roadmaster, 2850 Kerr

Street, Los Angeles, CA on Thursday March 28, 1991. The hearing was postponed and eventually held on May 15, 1991. As a result of the evidence adduced at the hearing, the Claimant was found responsible for violating Rules A, I, 618, 2.16.5 and Rule 607 of the Chief Engineer's Instructions for the Maintenance of Way and Structures, Southern Pacific Transportation Company and Rule 4 of the Safe Work Practices for SP/SSW Employees in the Maintenance of Way Track Department. The applicable portions of the Rules read as follows:

Rule A: Safety is of the first importance in the discharge of duty.

Rule I: Employees must exercise care to prevent injury to themselves or others. They must be alert and attentive at all times when performing their duties and plan their work to avoid injury.

Rule 618: DEFECTIVE EQUIPMENT. Employees must observe the condition of equipment and tools which they use in performing their duties and if found defective must not use them until they are put in safe condition. Defects must be reported to the proper authority.

No officer or employee of this Company is authorized to request or require an employee to use defective . . . machinery, tools or appliances of any kind.

The Company does not require its employees to incur risks, and directs them to exercise proper care and judgment to protect themselves.

Rule 2.16.5: Employees must not use defective tools or materials or make unauthorized alterations or modifications to tools. Employees will use proper tool for job being performed and must know that the machinery, tools and appliances which they are to use are suitable and in proper condition. . . .

Rule 607: Conduct: Employees must not be:.

1. Careless of the safety of themselves or others;
2. Negligent;. . .

Any act of. . . negligence affecting the interests of the Company is sufficient (sic) cause for dismissal and must be reported. Indifference to duty, or to the performance of duty, will (sic) not be condoned. . .

Safe Work Practices for SP/SSW Employees,
Rule No. 4:
HAND TOOLS.

- A. Tools must be inspected prior to use. If found defective, they must be repaired to removed from service, reported to supervisor and not used. Tools found defective (sic) should be turned over to supervisor, who will see that they are properly disposed of.
- B. Use tools only for the purpose (sic) for which they are designed. . . .

The incident which precipitated this matter occurred on June 30, 1991, at Taylor Yard. The Claimant, working as a laborer, was assisting another employee in driving spikes between the rail and a guardrail. To accomplish this they were holding one spike mall on top of the spike and hitting it with another spike mall. Around 12:55 p.m., a piece of metal dislodged and hit another employee in the arm, severing his artery. It was subsequently determined that the metal remained lodged in the employee's arm.

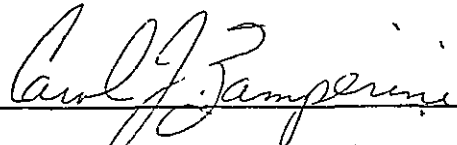
In reviewing this case, the Board is aware the employees involved had no intention of injuring another employee. That aside, the fact remains they were utilizing practices which were not only unsafe, but in violation of the expressed Rules. It makes little difference that the Foreman had never corrected employees previously who had used the same method, the Claimant

must accept responsibility for improperly using the tools in question. Besides, the Claimant admitted he had been told in safety meetings not to strike metal tools with metal tools when installing spikes. In many respects, the Claimant, as well as, the injured employee were fortunate that the injury was not more serious. Considering the obvious propulsion of the errant piece of metal, an employee could have lost his/her life or his/her vision.

The Board believes the penalty issued in this case was reasonable.

AWARD

The claim is denied.



Carol J. Zamperini
Impartial Arbitrator

Submitted:

August 21, 1991
Denver, Colorado