

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - K. G. Ortloff
Award No. 124
Case No. 124

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 three (3) 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.

By letter dated April 19, 1991, the Claimant was notified to be present at a hearing to be held on May 3, 1991, at the

office of Roadmaster, Klamath Falls, OR. The purpose of the hearing was to ascertain whether or not the Claimant had violated Rules A, I, 607, of the Rules and Instructions for the Maintenance of Way and Structures and Engineering Department employees, as well as, Safe Work Practices Item # 1. The cited rules read as follows:

Rule A

Safety is of the first importance in the discharge of duty.

Obedience to the rules is essential to safety and to remaining in service.

The service demands the faithful, intelligent and courteous 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 607: CONDUCT: Employees must not be:

- (1) Careless of the safety of themselves and others;
- (2) Negligent; . . .

Item #1. . .PERSONAL PROTECTIVE EQUIPMENT

Paragraph B. Safety hats or caps and safety glasses with side shields furnished by the company must be worn while on duty when required.

Item "2. . .HANDLING MATERIAL BY HAND

Paragraph E, Before handling any material, you must be aware of footing conditions to prevent slipping, tripping or falling.

The hearing, which was postponed twice was held on June 7, 1991. After reviewing the evidence presented at the hearing, the Carrier determined the Claimant had indeed violated the

aforementioned Rules. He was suspended for a period of three (3) working days.

The Claimant worked as a Grinder Helper. The incident which precipitated the charges occurred on April 10, 1991, while he worked as a crew member on the Grinder Train. At one point, his Supervisor directed him to retrieve a five gallon can of Diesel fuel conditioner from the water car. The can was setting near the generator behind a pile of used grinder stones. The Supervisor had picked up the can earlier to check its contents and then placed it back in the same spot. The Claimant responded to the directive proceeded to get the can. Once in the water car, he stood on top of the used grinding stones to pick up the five gallon container and slipped. As a result he twisted his back.

On the same day, according to the testimony of the Supervisor, the Claimant was observed welding without wearing safety glasses. A charge the Claimant denies.

The Union justifiably points out the possibility that the manner in which the Grinding Train stored used grinding stones was unsafe. In addition, the storeage of other useful materials, i.e. the diesel fuel conditioner may also have been suspect. They intimate that if the practice of storing these materials had been more carefully devised, the Claimant would not have been in a position to be injured. They also had a very good point when they pointed out the failure of the Supervisor to relocate the Diesel fuel conditioner once he picked it up. It may not have been his job to distribute the conditioner, but,

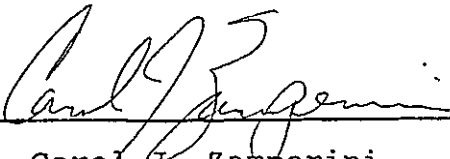
it is his job to assure safe working conditions. If that means picking up a five gallon can of Diesel fuel conditioner, then so be it.

However, the issue here is not whether the crew could follow safer procedures, or whether the Supervisor failed to do everything he should have, but the question is whether the Claimant, himself, could have taken steps to avoid the injury. Even though the grinding stones could have been stored more meticulously, this Board believes the Claimant failed to take the necessary, common-sense steps to avoid injuring his back. For one thing, it should have been obvious to him that the used grinding stones were at best unstable. He should have realized stepping up on a pile of stones in order to retrieve anything of significant weight was at best risky. Secondly, he could easily have moved some of the stones, thus creating a solid path on which to stand. Having done neither, he must accept responsibility that the injury was caused by his own carelessness.

The penalty issued in this case was reasonable.

AWARD

The claim is denied.



Carol J. Zamperini
Impartial Arbitrator

Submitted:

September 23, 1991
Denver, Colorado