

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - J. C. Lopez
Award No. 131
Case No. 131

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 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 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.

On October 3, 1991, the Claimant was notified that he was being withheld from service pending a decision reached following

a formal hearing. The Investigation was scheduled to occur at the office of the Trainmaster, 200 South Adams Street, Anaheim, CA, beginning at 10:00 a.m., Friday, October 18, 1991. The purpose of the hearing was to determine if, on September 30, 1991, he had failed to properly control the movement of the Ballast Regulator he was operating, causing him to rearend a Tamper Machine at Los Nietos, MP BB6501.6, causing him to be injured.

The hearing was postponed by mutual agreement and was eventually held on October 31, 1991, at the office of the District Engineer, Monterey Park, CA. The evidence produced at the hearing, convinced the Company that the Claimant was guilty of violating several rules which resulted in the above accident. The rules cited read as follows:

Rule 964. FOLLOWING MOVEMENTS: Track cars must not be attached to trains, nor operated within 500 feet of the rear of a moving train or a standing train. When two or more track cars are being moved as a group, they must maintain sufficient interval between cars to provide safe stoppng distance to prevent collisions. When stopping, a signal must be given to following track cars.

Rule 2.11.8. Operators must have track cars under control at all times and be able to stop short of one-half the sight distance or before striking an obstruction on, or foul of, the track.

Rule 2.11.11. When following moving trains, track cars, must remain not less than 400 feet to the rear of same and shall not stop within 200 feet of standing trains. When running, the distance between individual track cars, or between groups of coupled track cars, must not be less than 500 feet. When stoppng, the car or group of cars in advance must give signal to the following car.

Rule 2.11.13. When approaching street or highway (sic) grade (sic) crossings, operators of track cars must have their cars under control and before proceeding must know that vehicular traffic will not be endangered (sic). When necessary to ensure safe passage, track cars must be preceded by a flagman or, in the case of one-man cars, they must be stopped and pushed over the crossing.

When approaching railroad grade crossings, operators of track cars must have their cars under control and, before proceeding, must be assured that the route is clear for safe passage of track car over the crossing.

Flangeways in public or private crossings should be watched for obstructions.

General 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.

On the day of the accident, the Claimant, working as a Machine Operator, was assisting in the movement of equipment from Brea to Los Nietos. At the time, he was operating a Ballast Regulator which was following a Tamper Machine being moved by a fellow employee. During the movement, they had to cross several intersections in the area of Los Nietos. One of those crossings was at Scott Avenue which was approximately 4-5 miles from the yard. The Tamper Operator who was in the lead, noticed a car fouling the crossing and gave a "high" sign to the Claimant indicating the need to slow down. According to this employee's testimony, he gave the signal around 150 feet from the intersection. During this time, he looked over his shoulder and observed the Claimant looking in his direction. He believed the

Claimant, who was 150-200 feet behind him at the time, saw the signal. He further testified that he believed he was traveling at 6-8 mph as he approached the intersection. Upon seeing the car, he slowed to about 3-4 mph. Once the car cleared the crossing, he proceeded. As he proceeded through the crossing he was rearended by the Claimant's Ballast Regulator. He moved his machine into the clear and then disembarked and ran to see if the Claimant, who appeared dazed and had not moved, was injured. When he arrived at the Ballast Regulator, he climbed onto the machine and assisted the Claimant in moving it into the clear. After a while, they tried, but were unable to contact the Foreman. Therefore, they decided to continue to the yard. Once there, the Claimant was transported to the hospital where he was examined and treated.

The Claimant would have us believe he first began applying his brakes 600 feet from the crossing after noticing that the crossing was fouled by a car. It was then according to his testimony, that he first felt a deficiency in the braking system. However, it was not until about 200 feet from the crossing that he realized the emergency brake was also not working and he would be unable to stop.

There are several reasons why the Claimant's story is not credible. First and foremost, the brakes were operable immediately after the collision when the Claimant moved the machine from the scene of the accident into the yard. Secondly, when the Mechanical Engineer tested the brakes that same day, he found nothing wrong. The brakes, including the emergency brake,

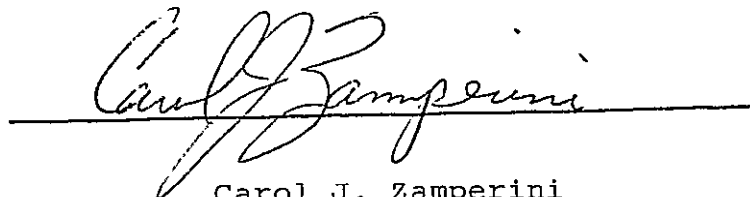
worked according to specifications. These two facts in mind, it seems unlikely the brakes failed. Even the Claimant testified that he never experienced brakes failing at a given point only to be operational subsequently. In addition, the fact that the equipment was still in high gear when inspected after the accident, would indicate the machine was being moved under normal conditions and had not been downshifted to compensate for faulty brakes.

Finally, the Claimant's testimony was in direct conflict with the testimony of the Tamper Operator. The Claimant said he flashed his lights and blew his horn at approximately 200 feet from the crossing. This was the same time the Tamper Operator said he looked back to signal the Claimant to slow down. If the Claimant had been flashing his lights and blowing his horn the lead person would have noticed, he did not. Add to this the fact, the mechanical engineer estimated the Ballast Machine's speed to be in excess of twenty-five mph and the Claimant's story becomes further tainted.

The Claimant's failure to comply with the rules in this instance could have led to very serious ramifications. He was fortunate not to have been more seriously injured and not to have injured the Tamper Operator. Under the circumstances, the Claimant's record cannot mitigate his discipline.

AWARD

The Claim is denied.



Carol J. Zamperini
Neutral

Submitted:

February 24, 1992
Denver, Colorado