

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 137
Award No. 137

Claimant: L. A. Martinez

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE Southern Pacific Transportation Company

STATEMENT
OF CLAIM

1. That the Carrier's decision to suspend Claimant, L. A. Martinez for a period of thirty (30) calendar days was excessive, unduly harsh and in abuse of discretion and in violation of the terms and provisions of the Collective Bargaining Agreement.
2. 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 November 18, 1992, the Claimant, who is a bridge and building carpenter, was working with a three crew gang at Gila Bend. The gang was raising the ballast guards at MP 846.70. They were in the midst of installing a 12" ballast guard raise. They cut a 4" X 12" X 16' piece of wood into two 8' sections and installed one at the east end of what was to be a box culvert. The Claimant started to drag the remaining piece to the west end of the work area. The Foreman told him to wait for some help.

Simultaneously, another employee started the Power Plant. The Claimant testified that the noise prevented him from hearing the Foreman. The Foreman could not say whether the Claimant heard him or not. The Claimant did not wait for help and while trying to manipulate the section he injured himself. An injury he immediately acknowledged.

On November 23, 1992, the Carrier sent the Claimant a charge letter advising him to appear at a formal investigation on Thursday, December 10, 1992. The purpose of the hearing was to determine whether the Claimant was responsible for violating the following rules by failing to adhere to his Foreman's instructions not to move the 8' section of wood without help:

Rule 607. CONDUCT: Employees must not be:

1. Careless of the safety of themselves or others;
3. Insubordinate;
4. Dishonest;

The hearing was held as scheduled. By Certified Letter dated January 8, 1993, the Claimant was notified that the Carrier, after reviewing the evidence introduced at hearing had determined he was guilty of violating Rule 607, Sections 1 and 3. He was suspended for thirty (30) calendar days.

DECISION

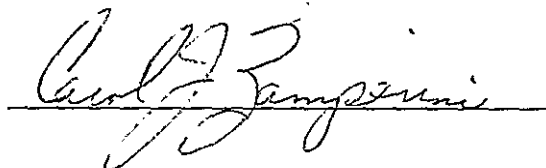
The Board believes there is not sufficient evidence to support the charges brought against the Claimant. Those who testified could not say with any certainty that the Claimant heard the Foreman tell him to wait for help. Furthermore, in answer to the question, "Is it uncommon for one of you to move these boards of this length and weight?", the Foreman of the gang responded, "No, it's not. Since we have very few men on the gang we more or less have to drag something around by ourselves." That being the case, it is probable the Claimant would have thought nothing of dragging the board if he did not hear the Foreman's directive to wait for help.

Finally, this Board cannot hold the Claimant accountable for carelessness when he was merely doing what other members of the gang had been doing because they were shorthanded, namely, "dragging something around by himself".

Based on the rationale delineated above, the Board believes the Carrier erred in assessing the Claimant the thirty (30) calendar day suspension.

AWARD

The claim is sustained.

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

Carol J. Zamperini
Impartial Neutral

Submitted:

May 13, 1992
Denver, Colorado