

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 141  
Award No. 141

Claimant: L. W. Stein

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 from its service for a period of five (5) 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.

After reviewing the record taken at a formal hearing held in Tucson, Arizona, February 18, 1993, the Carrier determined the Claimant had violated Rule 965 of the Rules of the Maintenance of Way and Structures, Southern Pacific Transportation Company, on February 1, 1993, when he ran his Tie Crane over the east switch at Bon, MP 908.3, at a speed in excess of extreme caution and over 5 MPH. As a result, when the dispatcher attempted to realign the switch while the machine was over the switch points, the Tie Crane derailed and the Claimant was injured.

The Claimant was charged with violating Rule 965, that part which reads:

Rule 965. OPERATION OF TRACK CARS

SWITCHES: . . . Operators must use extreme caution when running over switches. . . Reduce speed when approaching power operated switches, and do not pass over same in excess of five miles per hour. . .

On the day of the incident, the Claimant was operating the Tie Crane on Tie Gang T-8. The Gang was waiting to obtain authority to exit the siding and enter the main track in an easterly direction. The switch at the east end had to be aligned before they could begin movement. Normally, the Foreman of the Gang would have received track and time and would have thrown the selector lever of the switch to the hand throw position. This would have allowed the Foreman to maintain control of the switch. However, the Foreman for some reason, left the switch in the motor mode which allowed the dispatcher to retain control of the switch. The crew began moving their equipment out of the siding. The Claimant was about sixth in line. As the Claimant moved his machine over the switch points at the east end of the siding, the dispatcher, for whatever reason, attempted to realign the switch. This action caused the Tie Crane, which was carrying nine ties, to derail. The Claimant suffered injuries to his back and hip.

The Organization argues that the Claimant did proceed very cautiously over the switch. Even though he may have "guestimated" his speed initially as between 15-20 MPH, there was no way he had of knowing his exact speed since there is no speedometer on his machine. In fact, there is no way any one could tell the speed at which he was operating his machine, the evidence against the Claimant is circumstantial. Besides, it was not his fault the dispatcher chose this particular time to throw the switch. If anything, the fault should lie with the dispatcher. The Claimant has not suffered a reportable injury during his tenure, further proof of the careful manner in which he approaches his work. He even tried to avoid reporting this accident. He worked the entire week before the pain became so severe he had to finally report the injury.

The Carrier contends the Claimant is guilty as charged. Not only did he tell the Roadmaster, immediately after the accident, that he was going 15-20 MPH, but the Tie Crane traveled a distance of 40 feet after it derailed, which clearly indicates he was operating in excess of 5 MPH.

DECISION

Contrary to the testimony of the Claimant, the Board believes that a machine carrying nine ties would not have gone 40 feet after derailling, if, it was being operated at a speed of 5 MPH. Instead, it is more likely that a machine carrying that much weight and traveling only 5 mph would have had so much inertia it would not have traveled very far after leaving the track. Therefore, the Board believes the Carrier had sufficient support for its contention that the Claimant was traveling at a speed in excess of 5 MPH. The Claimant was, at least in part, responsible for the derailment.

Even though the Claimant has a good employment record, the Board believes the penalty issued in this case, (5 day suspension) was reasonable under the circumstances.

AWARD

The claim is denied.

  
\_\_\_\_\_  
Carol J. Zamperini  
Impartial Neutral

Submitted:

July 14, 1993  
Denver, Colorado