

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 142
Award No. 142

Claimant: F. M. Robles

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 three (3) 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.

By letter dated, May 14, 1993, the Claimant, a welder for the Carrier, received notice that he was to attend a formal investigation on Friday, May 21, 1993, at Dunsmuir, California, at the office of the District Engineer. The purpose of the hearing was to determine if he violated Rules 607 and 609 of the Rules and Instructions for the Maintenance of Way and Structures and Engineering. The rules cited in the allegations include those sections which read:

Rule 607: CONDUCT: Employees must not be:

4. Dishonest;

Any act of hostility, misconduct or willful disregard or negligence affecting the interests of the Company is sufficient cause for dismissal and must be reported.

Rule 609: CARE OF PROPERTY:

. . . Employees must not appropriate railroad property for their personal use.

The hearing was held as scheduled. Subsequently, the Carrier reviewed the evidence presented and concluded the Claimant had been guilty of the rule violations. By letter dated May 28, 1993, the Claimant was notified of the Carrier's decision, and further advised him he would be suspended for a period of three (3) days.

The events leading up to the charge letter began on May 4, 1993. During the evening of that day, Special Agent for the Railroad, R. Bryant, received a call from Special Agent Bromas, Oakland, California. During the call, he was advised that a Mr. J. Johnson wanted to talk to him. The Agent attempted to contact Johnson, but was unsuccessful. By some other means, Agent Bryant was told that Johnson wanted to report the Claimant for stealing Company property and storing it at his ex-wife's home. The Agent then went to the address in question to investigate. He was accompanied by the Deputy Sheriff. Once there, they were given permission by the Claimant's ex-wife to search the property. In the garage, they found a good many tools and accessory equipment which could have been taken from the Carrier. When they later questioned the Claimant about the items, he denied any knowledge of most of the equipment, but did admit to having taken three items, a claw bar, tie tongs, and a tamping bar from the scrap pile. However, he did say he did have some other welding equipment in the backyard of his ex-wife's home, but could not tell from the pictures if the items shown were his. In any case, he continued to deny taking them from the Carrier.

The Organization points out that the equipment the Claimant is accused of taking could have been purchased or taken from anywhere. There is simply insufficient evidence to show the Claimant was responsible. Furthermore, it is well-known that the Claimant and his ex-wife are going through a difficult divorce settlement. She, at least in part, is one of the people

advocating the Claimant's guilt. However, there is reason to believe the ex-wife and her boyfriend set-up the Claimant by moving the questionable equipment onto the property and then calling to accuse the Claimant of theft. After all, the person who allegedly reported the Claimant testified that someone must have used his name, because he had not called the Special Agent.

The Carrier points out that even absent the other equipment, the Claimant admits he took at least three tools from the Carrier's scrap pile in violation of Company rules. Besides, tools placed on scrap piles are to be cut up by Welders.

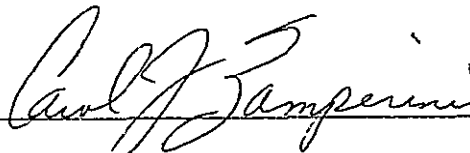
DECISION

The Carrier's rationale regarding tools placed on scrap piles makes very good business sense. If it was not a requirement to cut up tools which are placed on the scrap pile, they would place themselves at a great disadvantage. Unfortunately, some employees, albeit a minority, would place perfectly good tools in the scrap pile, retrieve them subsequently and claim they really didn't steal from the Company since the tools were going to be discarded anyway. This would only add to the theft problem that the Carrier and other employers already face. While there is no evidence concerning any of the other tools or equipment found on the ex-wife's property, the Claimant himself admitted to taking the three tools off the scrap pile. When he did this, he violated the strict rules of the Carrier in this regard. Therefore, he is guilty of the charges leveled against him, although perhaps not to the degree originally believed.

The Board appreciates the Carrier's concern regarding theft. It creates an economic hardship which puts not only the Company, but its employees at risk. It simply cannot be tolerated. Even though there is no evidence the Claimant intended his actions to be theft in the normal sense of the word, he did take Carrier property to which he was not entitled. Therefore, some penalty is appropriate and the Board does not believe the penalty issued was excessive.

AWARD

The claim is denied.



Carol J. Zamperini, Neutral

Submitted:
July 20, 1993
Denver, Colorado