

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 146
Award No. 146

Claimant: A. R. Sanchez

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

STATEMENT
OF CLAIM

1. That the Carrier's decision to disqualify Claimant as a Class No. 17 Tractor Bulldozer Operator 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 Claimant's August 6, 1970 seniority date as a Class No. 17 Tractor Bulldozer Operator 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 June 3, 1993, the Carrier sent the Claimant a letter which addressed the mechanical failure of Tractor/Bulldozer, SPO-488, which the Claimant had been operating for several months. It was apparent from a follow-up investigation that the

equipment had failed because there was no oil in the final drive compartment. The Carrier holds the Operator responsible for greasing the machine.

The letter went on to say the Carrier was alleging that the Claimant had violated Rule 1.2.19.2. As a result of the charge, a formal hearing was scheduled for June 14, 1993. On June 8, 1993, the hearing was postponed until June 22, 1993.

The rule allegedly violated by the Claimant reads as follows:

Rule 1.2.19.2, Roadway Machine Operators:

They will be held responsible for the safety, care, maintenance and performance of the machines to which they are assigned. An immediate report will be made to the proper authority when a machine is out of service or not performing properly. If a safety device is not operating properly, the operator will take every precaution for safety. If the machine cannot be operated safely, it will be removed from service and reported to the Work Equipment Supervisor and District Engineer. They will be governed by instructions of Work Equipment Supervisor or roadway mechanics regarding the maintenance and operation of machines.

Upon taking over a machine and again upon completing an assignment, they will render to the appropriate Maintenance of Way officer and Work Equipment Supervisor under whom they may be working, a report of the condition of the machine. This report will list small tools, operator instruction book, parts book and repair parts on hand. Copies of all reports shall be made to the District Engineer and Supervisor of Work Equipment.

Roadway machine operators must have the proper hand tools necessary for maintenance and servicing a machine. On machines so equipped, machine operators will record each day in the machine log book the maintenance and/or repairs they performed on the machine that they are assigned to operate.

Approximately two weeks after the hearing the Claimant received a certified letter with the following contents:

Investigation held Tuesday, June 22, 1993, revealed that you did not take the initiative to make sure that you knew the proper procedures in maintaining this piece of equipment.

Therefore, you are disqualified as a Tractor/Bulldozer Operator.

The Claimant had been employed by the Carrier since 1969. In 1974 he was promoted to Foreman. On May 19, 1993, he was assigned to operate Tractor/Bulldozer SPO-488. He went on duty at Street Crossing at Redding, California at 6:00 a.m.. He went off duty that same day at 4:30 p.m.. At some point during the day his machine suffered mechanical failure. A subsequent examination of the machine found it to be locked up on one side because the final drive had not been properly lubricated and was dry.

During the Investigation, the Claimant admitted he had not checked the fluid level in the final drive compartment during the four months he operated the equipment. However, the manual required the fluid in the final compartment be checked every 250 hours of operation or every thirty (30) days.

DECISION

The only reason the Claimant gave for not checking the fluid level in the final drive compartment was that he lacked the proper tools. The Claimant gave every indication at hearing that he knew he had to check the fluid level in the final drive compartment. The only reason the Claimant gave for not performing this task was that he lacked the proper tools. He tried to lay blame for this deficiency on the Carrier by saying he asked for the tools several times. It is simply not credible that he would not have been provided with the appropriate tools when other workers apparently had them. Furthermore, since he testified he and his co-workers checked their machines collectively on a regular basis, it is equally incredible he could not have borrowed the necessary tools from one of them.

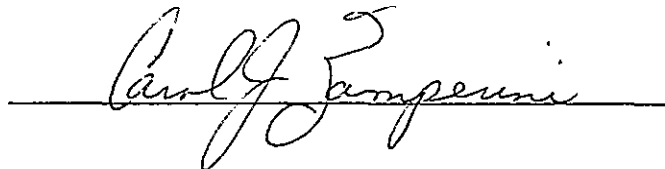
Finally, the Organization argues that the Claimant was not properly instructed on the maintenance of his machine during the twenty (20) years he was qualified. There is no substantiation of this charge. Besides, the Board is dissuaded from

accepting that position by the Claimant's own testimony. As stated above, he said several times during his testimony he was aware of the requirement to check the fluid level.

In the past, this Board has ruled the Carrier has erred when they disqualify an employee as a disciplinary measure. In this case, the Board believes the disqualification was based on a legitimate concern that the Claimant lacked the prowess to operate this particular machine. The Board believes the Carrier has substantiated its case. If in the future the Claimant passes the appropriate tests and demonstrates an understanding of this machinery and its maintenance, he could be qualified once again.

AWARD

The claim is denied.

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

Carol J. Zamperini
Impartial Neutral

Submitted:

October 28, 1993
Denver, Colorado