SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 151
Award No. 151

Claimant: J. N. Coonrod

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

STATEMENT OF CLAIM:

1. That the Carrier's decision to suspend Claimant from its service for a period of ten (10) 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.

The Claimant is a Utility Tractor Operator. He has worked for the Company continuously since November 30, 1972. He was. however, employed for six months in 1969, but resigned.

On May 16, 1994, the Claimant went on duty at 7:00 a.m. in Bakersfield, California. He was directed by his Foreman to load eight (8) sacks of concrete onto his truck and deliver it to Fresno, California. He loaded all but three of the 60 lbs. sacks onto the bed of his truck from the storage shed, and picked up

one of the three remaining sacks. As he turned to exit the shed with the sack in his hands, the door of the shed closed into him and he was pushed backwards. He fell backwards across a pallet still holding the sack of concrete in his arms. According to the record, he then continued loading the three remaining sacks onto the truck and drove to Fresno, California. Once in Fresno, he reported the incident to his Foreman and indicated his back was bothering him. His Foreman sent him to his motel at around 11:30 a.m.. At sometime after 2:00 p.m., the Claimant was taken for medical attention.

When the Division Bridge and Building Supervisor conducted an investigation into the incident, he discovered the Claimant was not wearing his back support and that he failed to secure the door to prevent its closing on him. Following this initial investigation the Claimant received a charge letter dated May 18, 1994. Within the context of the letter, the Carrier cited the Claimant's injury record from 1969 to the present. This record consisted of ten injuries, including the most recent. The letter alleged that the Claimant failed to work safely and was accident prone. These charges alleged a violation of Rule 1007 and Rule 1102, those sections which read:

> Rule 1007. CONDUCT: Employees will not be retained in the service who are careless of the safety of themselves . . . .
>
> Rule 1102. PREVENTING INJURIES: Employees must exercise care to prevent injury to themselves . . . They must be alert and attentive at all times when performing their duties and plan their work to avoid injury.

The Claimant was advised to report to a formal investigation to be held on June 2, 1994, at the Office of the Road Foreman of Engines, 700 Sumner Street, Bakersfield, California beginning at 9:00 a.m.. The hearing was postponed until June 22, 1994.

During the hearing the Carrier introduced the Claimant's employment record. They then reviewed through testimony every injury sustained by the Claimant since his employment with the Company.

After reviewing the evidence adduced at hearing, the Carrier held the Claimant responsible for the aforementioned rule violations and suspended him for a period of ten (10) days effective upon his return from furlough status.

The Organization strenuously objects to the use of the Claimant's previous injury records. Some of those injuries go back to 1969, and, in many cases the Employe was never disciplined or counseled on the occurrences. It is improper and unfair to use those records to prove and/or support the charges against the Claimant for this incident.

The Employe has been a loyal and dedicated employee for over twenty (20) years. While it is true the Claimant may have been injured in the instant case, that does not prove a rule violation. It is the Carrier's burden to show, without a doubt, that the accused caused those injuries by his own carelessness or by violation of the safety rules.

The Carrier urges that the high incidence of injuries to the Claimant over his tenure demonstrates a failure to do his job safely. When his injuries are compared with the injuries of ten others on his seniority roster, it shows he has had nearly 1/4 of the total injuries sustained by the group.

The Board has considered the argument of the Union relative to the use of the Claimant's injury history. While it is true past incidence cannot be used to substantiate the current charges, they can be used to determine whether the actions taken by the Carrier are appropriate once the current rule violation is established.

The Claimant has been a reasonably reliable employe over during his employment. However, it cannot be denied that he has seemingly established a pattern of susceptibility to injury. Particularly revealing is his injury record in comparison to other employees who perform the same type of work. The majority of these employees had as much or considerably more service time than the Claimant, but, had a far lower incidence of injury. Since the work performed by the members of the seniority roster was at least basically the same work, the exposure to potential dangers should have been the same.

The injuries experienced by the Claimant not only cost the Carrier production time, but, they proved extremely costly. The Carrier has the right to expect employees to use extreme caution in performing their duties especially in light of the potential impact on other employees and on the business of the Carrier.

In reviewing the facts presented at hearing, it is the opinion of the Board that the Carrier acted properly in assessing the Claimant the discipline. The evidence supports the fact the Claimant violated the intent of Rule 1007 and Rule 1102. Since

the Claimant had been counseled previously and a letter included in his file, it is also the Board's belief the discipline issued was appropriate.

AWARD

The Claim is denied.

Carol J. Zamperini, Neutral

Submitted:

September 30, 1994
Denver, Colorado