SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 152
Award No. 152

Claimant: S. W. Hogan

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

STATEMENT OF CLAIM:

1. That the Carrier's decision to issue Claimant a Letter of Instruction 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 was notified, by letter dated August 22, 1994, to be present at a formal investigation to be held at the Office of the I-880 Cypress Project, 1357 Fifth Street, Oakland, California, at 1:00 p.m., Tuesday, August 30, 1994. The stated purpose of the hearing was to develop his responsibility, if any, in connection with his alleged failure to assist and guide Mr. R. Tinsley while he operated a Company van. According to the charge this caused the driver to back into a city street light pole, thus causing damage to the vehicle.

The following rules from the Safety and General Rules For All Employees, Southern Pacific Lines, were cited as possibly being violated:

1.1 Safety

Safety is the most important element in performing duties. Obeying the rules is essential to job safety and continued employment.

It is the responsibility of every employee to exercise care to avoid injury to themselves or others. Working safely is a condition of employment with the Company. The Company will not permit any employee to take an unnecessary risk in the performance of duty.

No job is so important, no service so urgent, that we cannot take the time to perform all work safely.

Rule 19.6 Backing (that portion reading):

When practicable work must be planned to prevent backing movements.

Before backing vehicles, where vision is impaired:

. . .

A second individual, when necessary, must take a position on the driver's side near the rear of the vehicle and act as a guide to protect the movement. If the driver loses sight of the guide, the move must be stopped immediately.

On September 26, 1994, the Carrier, after reviewing the evidence adduced at hearing, notified the Claimant that the charges had been substantiated by the evidence. As a result, he was issued a LETTER OF INSTRUCTION.

The Claimant then filed the present claim protesting the Carrier's actions.

The Claimant is a Machine Operator who, at the time of the Investigation, had been employed with the Carrier for nearly 18 years, ten of those years in his current occupation.

On the day of the incident, August 5, 1994, the Claimant was working as a laborer. He began duty at the 880 Project Office at 7:00 a.m. and went off duty at 3:30 p.m. at the same location. In the afternoon, he was returning from a job at Emeryville. He was a passenger in a truck driven by R. Tinsley. At one point they found the street they normally took blocked because of a fire. As a result, they drove to the next street, 34th Street, and attempted to circumvent the fire site. Without realizing it, however, the street they took was a dead end street. When they reached the end it was necessary for them to turn around. The Claimant, who was the passenger in the truck, testified he checked his side mirror and looked over his shoulder, while the driver did the same on his side. He said neither saw any obstructions. However, when the driver backed up, he hit a light pole. The light pole was bent over and the light fixture fell off onto the street. Bare wires were exposed. The Claimant believed there were citations issued, although he did not receive one. The two employees reported their accident when they returned to the office.

The Carrier investigated the incident and issued the charge letter to the grievant on August 22, 1994.

At the Investigation, the Organization objected to the charge letter issued to the Claimant. They argue it did not state a date of occurrence which is required by Rule 45. In addition, since the charge letter was issued on August 22, 1994 and the date of the incident was August 5, 1994, the Claimant was charged outside of the ten day time limit provided in Rule 45.

The Organization also took objection to the Carrier citing Rule 1.1 of the Safety and General Rules For All Employees. They urge that the particular rule has no bearing on any allegation against the Claimant. The Organization believed there was sufficient cause to withdraw the charges.

The Carrier contends they are within the time frame established by Rule 45. The charges are appropriate.

The Carrier further contends the Claimant was familiar with the rules and should have exited the van to provide visual assistance to the driver. His failure to do so resulted in damage to the van, damage to the light pole and injury to the two employees. A reconstruction of the accident demonstrated that the pole was visible from the side view mirror.

The Board has reviewed the arguments in this case. The Organization makes a thoughtful argument relative to the Carrier's delay in charging the Claimant. However, we disagree with the Organization's interpretation of Rule 45. There is no requirement the Claimant be notified within ten (10) days of the incident. There is a requirement the Carrier set up a hearing within 20 days of notification to the Claimant. That was done in this case. The Claimant was notified on August 22, 1994 and the hearing was held on August 30, 1994. The Carrier met the requirements of Rule 45.

Obviously, one of two things occurred the day of the incident. Either the driver of the van and/or the Claimant did not look for any obstructions before backing up or the obstructions were not visible from the van. In either case, the Claimant must realize some responsibility for what happened. If he did not look for obstructions, he was negligent. If he did look and did not see the light pole, he is still guilty of the charge. The very purpose of the rule is to cover those circumstances where the driver and/or the passenger do not have the ability to see everything behind them. That is why the second person has to exit the van and provide guidance to the driver.

The Board believes the violations were proved and the discipline issued was appropriate.

AWARD

The Claim is denied.

Carol J. Zamperini, Neutral

Submitted:

December 23, 1994
Denver, Colorado