

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 153
Award No. 153

Claimant: R. Tinsley

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Southern Pacific Transportation Company

STATEMENT
OF CLAIM

1. That the Carrier's decision to assess Claimant a ten (10) working days suspension 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 8:00 a.m., Tuesday, August 30, 1994. The stated purpose of the hearing was to develop his responsibility, if any, in connection with his operation of a Company van in such a manner that he backed into a city street light causing damage to the vehicle and injury to him and his passenger.

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 suspended from service for a period of ten (10) working days.

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 a little more than seven (7) years.

On the day of the incident, August 5, 1994, the Claimant was returning from a job site where he had been training on a new

machine. En route he picked up a passenger, S. W. Hogan. The two began duty at the 880 Project Office at 7:00 a.m. and were to go off duty at 3:30 p.m. at the same location. On the return trip, they found their normal route 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 testified he checked his side mirror and looked over his shoulder, while the passenger did the same on his side. He said neither saw any obstructions. He proceeded to back up and hit a light pole. The light pole was bent over and the light fixture fall off onto the street. Bare wires were exposed. The police did not issue a citation. The two 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 hearing was held less than ten (10) days later, the Claimant did not have the required time to prepare his defense and obtain witnesses. This also violated 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 Employee has been employed since May, 1984, and has a fairly good safety record. The Organization believes the charges should be dropped.

The Carrier contends they are within the time frame established by Rule 45. The rule states the Claimant will be given no more than ten (10) days from the date of notification of the charges to secure witnesses.

The Carrier further contends the Claimant was familiar with the rules and should have asked the passenger to exit the van and serve as a guide when he had to back up. His failure to do so resulted in damage to the van, damage to the light pole and injury to both 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. We disagree with the Organization's interpretation of Rule 45. The Carrier is correct, Rule 45 states that the Claimant will be

provided no more than ten (10) days after notification to secure witnesses. There is a further 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 Claimant or the passenger of the van did not look for any obstructions before backing up or the obstructions were not visible from the van. In either case, the Claimant is responsible 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 does 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. Furthermore, considering the Claimant's relatively short tenure and his previous record, the discipline issued was appropriate.

AWARD

The Claim is denied.



Carol J. Zamperini, Neutral

Submitted:

December 23, 1994
Denver, Colorado