

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 154
Award No. 154

Claimant: G. L. Lopez

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

STATEMENT
OF CLAIM

1. That the Carrier's decision to assess Claimant a thirty (30) days suspension without pay and disqualify him as a Class A Track Supervisor 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 September 12, 1994, to be present at the Tucson yard office , 1255 S. Campbell Avenue, Tucson, Arizona at 9:00 a.m. railroad time, Tuesday, August 16, 1994. The purpose of the hearing was to determine the Claimant's responsibility, if any, with his alleged operation of a hi-rail vehicle in the Clifton DTC block without first obtaining permission from the dispatcher. The hearing was also to determine if the Employee concurrently failed to control the movement of said hi-rail resulting in a collision with a train at Clifton, Arizona at 12:20 a.m., on August 9, 1994. The charge letter went on to cite the following Rules, which may have been

violated by the Claimant's actions:

Rule 1.6 CONDUCT

Employees must not be:

2. Negligent

Any act of . . . negligence affecting the interests of the Company. . . is sufficient cause for dismissal. . .

Rule 72.11.8. Operators must have track cars under control at all times and be able to stop short of one-half the sight distance or before striking an obstruction on, or fouled of, the track.

Rule 16.1 (M) Authority to Enter DTC Limits

, , , A machine, track car or employee may enter DTC block limits only after receiving verbal authority from the train dispatcher. . .

The Claimant was a Track Supervisor who worked on the Clifton Branch. His assigned work days were Monday-Friday. On Monday, August 8, 1994, he worked a 7:00 a.m. to 3:30 p.m. shift. Because of heavy rains, he went on overtime duty at 10:00 p.m. to check the conditions of the rail in both the Guthrie block and the Clifton block, between Duncan, Arizona and Clifton, Arizona, a distance of approximately 31 miles. According to a written statement from the Dispatcher, the Claimant did seek and was granted work and time authority for the Guthrie block, but did not receive track time for the Clifton block. In fact, the Clifton block was occupied by the Clifton Local. However, in his testimony, the Claimant said he believed he had track time for both blocks.

In any event, the Claimant proceeded through the Guthrie block and onto the Clifton block. Around 12:30 a.m., August 9, 1994, the hi-rail the Claimant was driving ran into the lead unit of the standing Clifton Local. According to the estimates of the train crew, the hi-rail was traveling at between five and ten miles an hour.

When questioned initially, the Claimant indicated he thought he had fallen asleep. At the hearing, however, he said he did not fall asleep, but, had attempted to stop the hi-rail, but the brakes did not work properly. He claimed the failure of the brakes as the reason the hi-rail had not stopped in time to avoid the train. No one was injured and there was no damage to the

train, but the damage to the hi-rail exceeded \$5200.00.

The Carrier determined that the evidence presented at hearing was sufficient to hold the Claimant responsible for the accident. They suspended him for 30 days and disqualified him as a Track Supervisor.

The Organization urges that the accident may have been avoided if the Claimant had had a laborer to accompany him on the inspection tour. Unfortunately, that position had been eliminated by the Carrier. They also point out the experience and tenure of the Claimant. Furthermore, they emphasize that the Claimant attempted to stop the train, but, the brakes were not working properly. They contend part of the problem may have been grease on the tracks.

The Carrier notes that the Claimant failed to acquire track time for the Clifton block something he was obligated to do. They further point to the fact, he initially claimed he fell asleep. The Claimant should have known he was tired; he had a responsibility to advise his supervisor who would have found someone else to inspect the rail. The Claimant failed in his responsibility as a Track Supervisor.

Unfortunately, where accidents are concerned hindsight is always twenty-twenty. It goes without saying that an individual would generally avoid a situation if s/he thought for a moment s/he would be involved in an accident. In the instant case, we have an employee who has a twenty year record, which from all available evidence was exemplary. He has one recorded incident of suspension, the current one, and one reported injury, which occurred in 1975. He has been a Track Supervisor since 1981. Beyond determining whether the Claimant was guilty of the rule violations, this Board must determine whether the penalty issued to the Claimant was reasonable in light of the cited rule violations and the Claimant's employment history and whether the Claimant's concurrent disqualification was appropriate.

The Board does not believe the Claimant was completely honest at hearing when he declared he did not fall asleep the night of the accident. In fact, his initial explanation to his supervisor was that he couldn't remember anything that happened during the period immediately before hitting the train. While it is true such short term memory loss could have resulted from an injury received in the accident, the record does not support such a finding. Instead, it is probable given the circumstances the Claimant fell asleep. For what other reason would he raise as part of his defense, the possibility that the presence of a labor

operative might have prevented the accident, since it would be unlikely that two people would have fallen asleep at the same time.

The Claimant showed poor judgment in not taking into account his fatigue on the night of the accident. It was probably his state of mind that resulted in his confusion over whether he had received the track time he needed for the Clinton block. It is safe to say, however, that the Claimant erred because he believed he had an obligation to the Company to perform the required work. It wasn't a question of being negligent to his duties, but a question of underestimating his stamina to perform the duties safely. Given the Claimant's record, this was not the usual occurrence in his work ethic. Instead he had performed successfully and effectively for the Carrier for nearly twenty years. Furthermore, with the exception of this incident, he had been a successful Track Supervisor.

The Claimant's record and his tenure are mitigating factors which should have been given greater consideration in the determination of the penalty. The Board believes the penalty issued given the circumstances was excessive and should be reduced.

It is also the opinion of this Board, that disqualification should not be used as a penalty for rule infractions, unless it can be said that the behavior of the Claimant demonstrated his inability to do his job. The Board does not believe the Carrier has met this standard. The Claimant has performed his job as Track Supervisor effectively for nearly 13 years. One accident or the failure to be certain he had obtained track time in one instance, is not sufficient reason to disqualify the Claimant.

AWARD

The thirty (30) day suspension without pay issued to the Claimant is to be reduced to a twenty (20) days suspension without pay. He is to be reimbursed the difference in any wages and benefits lost between the thirty (30) days suspension without pay and the twenty (20) days suspension without pay at his Track Supervisor's rate of pay. Furthermore, he is to be reinstated to his position of Track Supervisor with seniority unimpaired.

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

Carol J. Zamperini, Neutral

Submitted:

March 28, 1995
Denver, Colorado