

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 155
Award No. 155

Claimant: J. L. 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 assess Claimant a four (4) working days suspension without pay 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 October 20, 1994, to be present at the Office of Assistant Division Engineer, 9499 Atkinson Street, Roseville, California, at 9:00 a.m., Thursday, November 3, 1994, to determine his responsibility, if any, with his alleged failure to check the water supply in a spike gauger engine while working as a Spike Gauger Operator on Rail Gang #2, at M.P. 164.8, Blue Canon, California. His lack of actions allegedly caused the spike gauger engine to overheat and burn up.

For this reason, the Claimant was charged with violating Rule 72.13.11 and 72.13.15 of the Chief Engineer's Instructions

for Maintenance of Way and Engineering, effective April 10, 1994, which read as follows:

72.13.11 Before operating equipment, operator must assure himself that supply of engine oil, water, fuel and hydraulic oil is adequate.

72.13.15 Air, oil, temperature and other gages must be checked by operator at frequent intervals to insure normal operation. Any failure in normal operation, as may be revealed by gages, must receive immediate attention of operator, who shall stop engine and ascertain cause, making repair or adjustments, if practicable, before again starting engine. Oil pressure gage indicates the force of the crankcase oil through the engine. It does not indicate when the supply of oil in the crankcase is running low. If the oil pressure indicator should fall to zero while engine is running, the engine must be stopped immediately and reason for drop in pressure determined.

The hearing was postponed until November 17, 1994.

After reviewing the evidence from the hearing the Carrier determined the Claimant was guilty of the charges and suspended him for a period of four (4) working days. Following his suspension the Claimant filed the claim that is now before the Board.

The Claimant has been employed by the Carrier on a continuous basis since July 12, 1971. He qualified as a Machine Operator on August 2, 1982.

On October 19, 1994, he was operating a spike gauger at Blue Canon as part of Gang R-2. He went on duty at 7:00 a.m. and was to go off duty at 5:00 p.m.. After a safety meeting and exercises, the crew started their work at around 7:30 a.m.. The Claimant ran the gauger for six and one-half hours without incident. At around 2:30 p.m., the machine overheated and froze. Following an examination by a mechanic, it was determined the machine had run out of water which caused the problem. Despite the fact there appeared to be a leak in the radiator hose, the mechanic concluded the incident could have been avoided if someone had added water to the machine when it was first started in the morning. He testified to that fact at the Investigation.

The Claimant himself admitted he did check the oil the morning of the incident, but, was told to move out before he had the opportunity to check the water level.

The Organization points out the long service of the employee and his extensive experience. They also contend that the particular machine had many malfunctions and quite conceivably had a malfunction that day, since all indications were that the gauge may not have been working. Secondly, the Claimant was not familiar with the spike gauge. He had operated a Fairmont gauger and then went to a Norberg. It takes time to get used to a new machine. This might have contributed to the fact the Claimant did not notice anything wrong until it was too late. These things should be taken into consideration and no discipline should be issued in this instance.

The Carrier argues that it is the Machine Operator's responsibility to check the fluid levels of the machines before they are started. It was obvious from the investigation into the incident that the Claimant had not checked the water level. It did not have enough water to complete the job, especially in light of the warm conditions. There was a great deal of damage done to the spike gauger. The Claimant was responsible and the discipline issued should be upheld.

The Board has reviewed the record carefully and has looked at the Claimant's record. With the exception of four apparently minor injuries over his 23 years of service, the Claimant has an exemplary record and should be commended. If this were a minor rule infraction the penalty issued for a first offense would be far too great. However, the Claimant's failure to check the water level in his machine before starting out to work is inexcusable. There is no evidence he was asked to waive his safety check in order to get on the road. If there was that kind of pressure, he should have reported it to someone in greater authority. Instead, he did not take the precautions necessary and was responsible for considerable damage.

The Organization attempted to excuse what happened by saying the spike gauger was known for malfunctioning. However, there was little substantiation for this claim. On the other hand, the Board believes the evidence supports the charges against the Claimant. In view of the circumstances of this case, the discipline issued was reasonable.

AWARD

The Claim is denied.

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

Carol J. Zamperini, Neutral

Submitted:

December 27, 1994
Denver, Colorado