

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 160
Award No. 160

Claimant: R. J. Stokes

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 disciplinary Letter of Instruction was excessive, unduly harsh and in abuse of discretion and in violation of the terms and provisions of the current 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 remove the Letter of Instruction from Claimant's 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 Carrier directed the Claimant by letter dated October 24, 1994, to attend a formal hearing at the Roadmaster's Office, 1585 Oak Street, Klamath Falls, Oregon, at 9:00 a.m., Tuesday, November 1, 1994. The purpose of the Investigation was to determine whether the Claimant, a Foreman, had violated the following Rules while he and co-workers were replacing a rail at MP 434.2 on the Modoc Line on October 13, 1994, by allegedly allowing a Welder's Helper, who was under his supervision, to position himself in such a way that he was struck by the rail causing a fracture to his right foot:

Rule 1.1 Safety

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

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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 1.1.1 Maintaining a Safe Course

In case of doubt or uncertainty, take the safe course.

Rule 1.1.2 Alert and Attentive

Employees must be careful to prevent injuring themselves or others. They must be alert and attentive when performing their duties and plan their work to avoid injury.

Rule 71.2.3.1

Foremen. . .they are in charge of and are responsible for. . .the safe, proper and economical use of labor. .

Rule 71.2.3.3

Foremen must see that employees under them properly and safely perform their duties. . . .

The Carrier reviewed the evidence adduced at hearing and determined the Claimant was guilty of the charges. He was issued a Letter of Instruction with a copy placed in his Personal Record for future reference.

There were two crews working together following a Rail Detector. They were responsible for removing and replacing defective rails. They had been working together for about one week and had replaced at least ten rails.

The Organization points out that the two crews worked together for some time. Each man knew his job and demonstrated safe work practices. The incident which happened on the day in question, from the Organization's perspective, can be blamed on an odd-ball truck. The control levers on the particular boom truck being used that day were reversed from the levers on all other Company Boom Trucks. In addition, the Organization argues that the Carrier failed to provide adequate training to employees

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who operated the different Boom Trucks. The rail had already been placed when the Welder's Helper moved into the inside of the track to get to the other end of the rail. He had waited until it was safe. There was no reason for the Claimant to direct him to position himself otherwise. The movement of the rail from the plates to the inside of the rail instead of simply sliding forward, was totally unexpected and probably resulted from the operator pulling the wrong lever.

The Organization further urges that the Claimant had informed his Roadmaster about the problems with the reversed controls, but nothing was done to correct the problem.

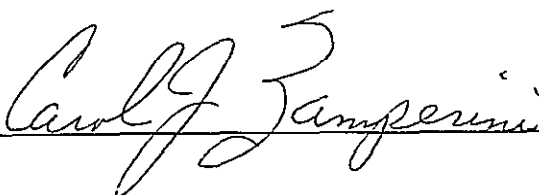
The Carrier argues the Claimant should have been aware that the Welder's Helper was putting himself in danger when he moved to the inside of the track. It was his responsibility to direct the employee to move outside the track until the track was permanently placed and ready to be bolted.

The Board, in reviewing the evidence presented at hearing, finds the arguments raised by the Organization concerning the operating controls of the Boom Truck to be particularly persuasive. If the controls on the truck were reversed, it is plausible that the Operator could have inadvertently pulled the wrong lever which resulted in the rail swinging inward rather than sliding toward the Foreman. In this scenario, it is understandable that the Welder's Helper, from his position, believed the rail had been stabilized and was responding as he had all week. Nevertheless, the Claimant was aware that the rail was not completely in place and should have advised the Welder's Helper accordingly. Rather than say nothing, the better choice would have been to have everyone stay clear until the Boom Truck had completed the moves.

Considering how serious the accident could have been given the Claimant's failure to provide adequate direction, the Letter of Instruction issued to the Claimant was warranted.

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:

July 7, 1995
Denver, Colorado