## SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 162 Award No. 162

Claimant: J. L. Briseno

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 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 November 8, 1994, to attend a formal hearing at the Office of the I-880 Project Construction Roadmaster, 1357 -5th Street, Oakland, California, at 10:00 a.m., Tuesday, November 15, 1994. The purpose of the Investigation was to determine whether the Claimant, a Spike Driver Operator, had suffered an injury on October 31, 1994, at Emeryville, California because he did not work safely. The portion of the Rule cited in the charge letter reads as follows:

## Rule 1.1 Safety

It is the responsibility of every employee to exercise care to avoid injury to themselves or others. . . .

The Claimant is a Spike Driver Operator who, on the day of his injury, worked for the Carrier for over 24 years. He had been a Spike Driver Operator for about five months. He went on duty at 7:00 a.m. and went off duty at 3:30 p.m..

When the Claimant suffered his injury, he was assisting another Spike Driver Operator in feeding spikes into the machine. As he ascended the steps onto the machine, he slipped and fell against the ladder causing an injury to his abdomen and chest.

The Organization contends the Claimant has never had trouble as an employee. He has been a dependable, intelligent and knowledgeable worker. They argue that the investigation was purely harassment since he was not negligent. They agree he may have stepped on some creosote which made the bottom of his shoes slippery, but, he cannot be faulted, it was just something that happened.

The Carrier counters that the employee, like other employees, has a responsibility to exercise care to avoid injury. They argue that the Claimant would not have been injured on the date in question if he had taken the proper precautions.

The Board, after reviewing the evidence, concludes that there is no question the Claimant was not as careful as he should have been when he ascended the steps onto the Spike Driver. As a result, he slipped and injured his abdomen and chest when he fell against the ladder of the machine.

Obviously the Claimant has a lengthy tenure and has been a very good employee. He should be commended for his employment record. However, the Board believes the Carrier demonstrated deference to his record when they issued him a Letter of Instruction for failing to exercise the necessary care in avoiding his injury. We see no reason to disturb this discipline.

<u>AWARD</u>

The claim is denied.

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Carol J. Zamperini, Neutral

Submitted:

July 6, 1995 Denver, Colorado