

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 165
Award No. 165

Claimant: L. S. Sanchez, Jr.

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 fifteen (15) working day 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 employed as a Foreman for the Southern Pacific Lines and was headquartered at Lordsburg, New Mexico. By letter dated May 8, 1995, he was directed to appear at a formal investigation at the Tucson Yard office, 1255 S. Campbell Avenue, Tucson, Arizona, at 9:00 a.m.. The letter further advised that he was being charged with the possible violation of Rule 1.6, that part reading:

1.6 CONDUCT

Employees must not be:

4. Dishonest

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

The charges stemmed from the theft of stereo units which had originally been taken from an SP train and found stored under a bridge. The stolen property was then retrieved and placed in the storage room of the Roadmaster's office at Wilcox, Arizona awaiting pick up by a Special Agent of the Railroad. The Roadmaster saw all ten stereo units on the morning of April 12, 1995, while he was collecting other work materials from the storage room. Around 8:30 p.m., the same day, he was notified that someone had broken into his office. Accompanied by police, he discovered all but three of the stereo units missing. One SP employee had been arrested for the theft. He spoke with the employee that evening by phone and visited with him the next day. It is unclear as to whether the employee charged implicated the Claimant or not, but, for some reason, the Roadmaster sought out the Claimant the next day to question him about the incident.

Around 1:30 p.m., the Roadmaster interviewed the Claimant at the west switch at Raso. The Claimant denied any involvement in the theft and was very cooperative. He told the Roadmaster that the other individual had brought three stereo units to his trailer the night before and asked him to store them for him while he went to get another load out of the back room of the Roadmaster's office. The Claimant also gave the Roadmaster a set of keys which he said he had taken from the other employee the night before.

The Claimant was never charged with the theft and no disciplinary action was taken against the Claimant until after the Investigation. He was then suspended for a period of fifteen (15) working days for violating Rule 1.6. The Organization filed the instant claim.

The Organization contends there is no evidence to prove the Claimant had anything to do with theft. In fact, there is every probability, they say, that there was no theft involved in this case. It is not unreasonable to conclude that the other employee found the stereo units and brought them to his Foreman for storage. There is no justification for charging the Claimant in this case. The Claimant should be reinstated with no loss of pay or benefits.

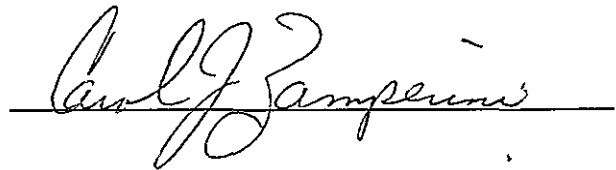
The Carrier contends the Claimant, after all, had in his possession stolen property which he had not turned into the authorities. He also had in his possession a set of keys to the Roadmaster's office.

DISCUSSION

There are no facts which show that the Claimant was actually involved in the theft of the stereo units. However, there is evidence that he received property from another employee which he knew had been taken from the Roadmaster's office in Wilcox on the same evening. In fact, he not only told the Roadmaster that, but also indicated the other employee asked him to store the materials while he went to get another load. He testified he never provided the Roadmaster with this information, but, his testimony is not credible. He also said he did not see the other employee the night before until nearly 9:00 p.m.. However, from the police report, we know that the other employee was arrested around 7:58 p.m. on April 12, 1995. Therefore, he would have had to deliver the stereo units to the Claimant's trailer sometime earlier than 7:58 p.m.. The Claimant, especially in his position as Foreman, had an obligation to contact SP authorities, but, apparently did nothing until approached by the Roadmaster at 1:30 p.m. the following afternoon. His failure to deal with the situation does not cast him in very good light. Even if he was not directly involved in the theft, his actions at the very least constituted a serious dereliction of his responsibilities to the employer. For this reason, the Board believes the fifteen (15) working day suspension was warranted.

AWARD

The claim is denied.



Carol J. Zamperini, Neutral

Submitted:

October 26, 1995
Denver, Colorado