

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 166
Award No. 166

Claimant: R. M. Vera

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 five (5) 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 works as a Truck Driver for the Carrier. On May 2, 1995, he was directed to attend a formal Investigation to determine whether he had violated Carrier rules by failing to use proper lifting techniques on April 19, 1995, while picking up a 40 lb. pail of spikes to place in the bed of a hi-rail pick-up. Because of this allegation he was charged with the following rule violations:

1.1 Safety

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

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 a 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.

1.6 Conduct, that part reading:

Employees must not be:

1. Careless of the safety of themselves or others.

Any act of . . . willful disregard or negligence affecting the interest of the Company or its employees is sufficient cause for dismissal and must be reported.

Indifference to duty, or to the performance of duty, will not be condoned.

The Claimant was offered a waiver in the amount of a five (5) day suspension.

The hearing was eventually held on May 11, 1995, at the Office of the Division Engineer, 19100 Slover Avenue, Bloomington, CA. The Carrier subsequently reviewed the evidence and determined the Claimant violated the cited rules. He was suspended for a period of five (5) working days. The Organization appealed the decision to this Board.

The Claimant is currently a Truck Driver for the Carrier. He has over 28 years of service with the Company. On the day of the incident he went on duty at 7:00 a.m. at Taylor Yard. During the day, it was necessary for him to load a quarter pail of spikes onto the bed of the Hi-Rail. He first lifted the pail to the bumper, mounted the bumper and lifted the pail over the tail gate. At that point, he experienced pain in his shoulder and his arm. He reported the incident to his Foreman, but did not want to fill out a report until he was sure he was actually injured. It was in the afternoon that he asked the Foreman to formally report the injury. The Claimant was then taken to the doctor. As a result of the injury, the doctor would not clear him for service, therefore, he missed work.

The Organization points to the Claimant's tenure and argues that he is worthy of a benefit of doubt especially since the Carrier's evidence falls short of proving the Claimant performed his duties in an unsafe manner. Furthermore, since the purpose of discipline is to rehabilitate and not punish employees, it is the Organization's contention the Claimant should be exonerated of the charges.

The Carrier argues that the Claimant had the necessary training to recognize the correct way of lifting materials. He failed to lift the pail of nails in the proper manner and caused the injury to himself. He could have asked for help, which was nearby or he could have lowered the tail gate and lifted the pail with two hands. The Carrier contends either scenario would have prevented the Claimant from sustaining an injury.

DISCUSSION

This Board believes the Carrier has provided sufficient evidence to sustain the charges against the Claimant. However, we also believe the penalty issued for this incident is excessive. The Claimant has 28 years of service. His employment record indicates he has been an exemplary employee during his tenure. It is understandable that he was somewhat dismayed at being cited for an injury and offered a waiver of a five (5) day suspension when his record indicates he has never been cited during his career for any rule violation and has had very few injuries. In fact, his record shows he was injured twice in 1969 and has had no injuries until the present injury. This certainly indicates that he is an employee who does work in a safe manner and is not careless when it comes to performing his work. It is true the Claimant demonstrated bad judgment on April 19, 1995, and deserves some discipline. We concur with the Organization that a five (5) working day suspension is not in keeping with the concept of progressive discipline. Rather than suspension, the Claimant should be issued 30 demerits and forewarned that future failure to adhere to the rules will result in a more severe disciplinary action.

AWARD

The claim is sustained to the extent outlined within this Award.

The Carrier is to comply with the Award within thirty (30) days of the date it is received.


 Carol J. Zamperini, Neutral

Submitted:

October 27, 1995
 Denver, Colorado