

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 182
Award No. 182

Claimant: J. A. Herrington

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE Southern Pacific Lines

STATEMENT
OF CLAIM

1. That the Carrier's decision to assess Claimant a thirty (30) 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 has been employed by the Carrier since January, 1978. He had been a Ballast Regulator Operator for about six months at the time of the incident which precipitated the charges in this case.

On June 18, 1996, the Claimant went on duty at Arena, California at 6:00 a.m. and went off duty at approximately 5:00 p.m. On that day, the Claimant was working with the Tie Gang and the Surfacing Gang, which were doing work on the main track. At some point they were notified that two trains had to by-pass them using the siding. They were given instructions to clear the track and roll by the trains. They were also advised not to resume work until they were given clearance. After the first train passed, the Claimant dropped the wing of his Ballast Regulator and continued to work. When the second train

approached, he could not raise the wing in time and the second train hit the wing. When he was questioned about the accident, he said he forgot that the wing was down.

As a result of the accident, the Claimant received a charge letter dated June 19, 1996. Therein, he was advised to attend a formal investigation to determine if his actions were in violation of the following rules:

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 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.

72.13.3 of the Chief Engineer's Instructions, which states:

Equipment shall not be operated in such a manner to endanger life, limb or property. No equipment shall be set in motion until it is known that the way is clear.

Following the Investigation and a review of the transcript, the Carrier suspended the Claimant for thirty (30) working days for violating the aforementioned rules.

PARTIES POSITIONS

The Organization claims that the lack of a radio prevented the Claimant from getting clear instructions. Especially since he was working out of view of the Foreman. They also argue that the Claimant was only told of one train and was unaware that a second was due. Therefore once the first train passed he returned to work. Since he customarily works with his head down, he did not see or hear the second train until it was too late.

The Carrier contends the Claimant, along with the rest of the gang, was told that there could possibly be two trains and they were to stay clear until they were told to go back to work. Furthermore, the employees were told to roll the trains by the work site. The Claimant obviously did not perform this duty, since he was on his machine, at least during the passage of the second train.

DECISION

Even though the Claimant has a lengthy tenure with the Carrier, he seems to have lapses when it comes to complying with safety regulations. Sometimes we do a job for so long, it becomes second nature and we are not as attentive as we should be. Perhaps this is what happened to the Claimant. However, the evidence indicates he was the only one who failed to understand the instructions given on the day of the incident. Because the Claimant has had problems with safety violations in the past, the Board believes the penalty issued in this case is not only appropriate, but, will hopefully serve to enhance the Claimant's awareness of the need to listen to instructions carefully and to operate his equipment safely.

AWARD

The claim is denied.


Carol J. Zamperini, Neutral

Submitted this 18th of December, 1996.
Denver, Colorado