

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 184  
Award No. 184

Claimant: R. M. Rosas

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 three (3) 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 received a charge letter dated July 25, 1996, advising him to appear at a formal investigation on Monday, August 5, 1996. The purpose of the hearing was to determine whether he had been responsible for the accident which resulted in his back injury on July 22, 1996, at West Oakland Yard, California. According to the letter, his actions may have violated 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.

#### 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.

#### 1.1.4 Condition of Equipment and Tools

Employees must check the condition of equipment and tools they use to perform their duties. Employees must not use tools, machinery or appliances that are improperly assembled or defective, nor use them for other than their intended purposes. Employees must report any defects to the proper authority.

Improvised or shop make tools, machinery or appliances must not be used unless authorized by department head.

#### 23.1 Lifting

When lifting:

. . . . .

Have secure footing, . . .

After reviewing the transcript of the hearing, the Carrier decided that the Claimant was responsible for not taking the necessary precautions to prevent his injury. He was suspended for three (3) working days.

The Claimant was first employed by the Carrier on November 12, 1970. With the exception of two months of leave for personal business, it appears he has worked continuously since his initial employment. He had been a Double Broom Operator for two years at the time of the accident.

On the day of the incident, he was working on the Ballast Regulator assisting in the dumping of ballast. He went on duty at 7:00 a.m. and went off duty at approximately 5:30 p.m. or 6:00 p.m. The car being used to dump the ballast was a heart select car with the ability to dump the ballast from the side. As with most dump cars/trucks it is often difficult to close the door after dumping a partial load. Obviously this is true because the remainder of the load lodges between the door and the edge of the car/truck bed. On this day, the Claimant was working by himself.

The loose ballast made the stepping very difficult. As the Claimant attempted to close the door after some ballast had been dumped, he slipped on the loose ballast injuring his back.

After the accident, the car was inspected, oiled and greased. Furthermore, because of the accident, the Carrier believed it was necessary to give everyone a refresher course in loading and unloading ballast.

#### POSITION OF THE PARTIES

The Organization argues that the Claimant was not properly notified of the Investigation. He did not fully understand the charges or his alleged failures. Furthermore, he did not understand why he was being charged for safety violations. He did nothing wrong. It was obvious the door of this car did not close easily. The Claimant should have had help, but, he did not. The Carrier recognized this and had the car oiled and greased after the accident. They even felt it necessary to conduct classes for all employees who dump ballast.

There is no proof of any violation. Of course the footing was not good. The ballast had just be unloaded and it had not been compacted. If classes were necessary, they should have been held earlier. Furthermore, the cars should have been oiled and greased sooner, if they had been, the door may have closed more easily.

The Carrier argues that the accident could have been avoided if the Claimant had been more attentive and more alert. Because he was not as careful as he should have been, he was responsible for his back injury and was in violation of the cited rules.

#### DECISION

The Board has reviewed the arguments of both sides. While it is quite possible that the Claimant could have done several things to avoid slipping and injuring his back, there is no evidence that he acted in a negligent or particularly careless manner. After all, he was working by himself and unrefuted testimony indicates the door was difficult to close. Furthermore, the Board finds it significant that the Carrier felt it necessary to conduct a refresher course on loading and unloading ballast after this accident. It was also pertinent that after the accident, the Carrier oiled and greased the car the Claimant had been working on before conducting the refresher course.

The Claimant's employment record with the Carrier not only shows a long tenure, but, a very good record. It shows no prior disciplinary actions, no cautions and only two minor injuries. A three day suspension for an accident that may not have been entirely his fault is excessive and is not supported in any way by his record.

## AWARD

The claim is sustained to the extent the three (3) day suspension is to be reduced to a caution. The Claimant is to be reimbursed for any and all loss of wages as a result of the suspension.

The Carrier is to comply with this Award within thirty (30) days.

  
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Carol J. Zamperini, Neutral

Submitted this 23<sup>rd</sup> of December, 1996.  
Denver, Colorado