

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 188
Award No. 188

Claimant: W. L. HARBISON

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE Union Pacific Railroad 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 was directed to attend a formal Investigation on Tuesday, September 10, 1996, at the office of the Roadmaster in Bakersfield, California. The purpose of the hearing was to gather evidence to determine whether the Claimant had violated Rules 1.1, 1.1.1, and 23.1 of the Safety and General Rules for All Employees and Rules 71.1.3 and 71.1.51 of the Chief Engineers Instructions for Maintenance of Way and Engineers of the Southern Pacific Lines. The cited rules read, in part:

Rule 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.

Rule 1.1.1 Maintaining a Safe Course.

In case of doubt or uncertainty, take the safe course.

Rule 23.1 Lifting

When lifting, good lifting practices and body mechanics are essential to prevent personal injury. Mechanical carrying aids must be used when available to handle materials.

Rule 71.1.3 All work must be performed in a manner that complies with Company rules, Departmental instruction, guidelines, and standards. If in doubt as to the proper procedure to follow or precautions to take, employees must consult with their supervisors.

Rule 71.1.51 When performing any type of work, proper and approved tools for the work must be used and then only in accordance with safe practice.

Following the Investigation the Carrier determined that the charges were substantiated. They assessed the Claimant a five-day suspension without pay.

The charges stemmed from an incident which occurred on August 15, 1996. On that day, three crews consisting of seven workers were assigned to replace ties in Zone 5 near Fresno, California. One of the employees, removed the old ties using a backhoe. He worked ahead of the others who were either replacing the ties manually or spiking in the tie plates. The crew had at least 200 ties to replace and this was the fourth day at this particular job. The Claimant and a co-worker were assigned to install the new ties. The new ties had been spaced at intervals across the top of the rails. The two men would push the individual ties up the rail to where the old tie had been removed and insert the tie manually. On this day, the co-worker was pulling the tie using a tie-tong while the Claimant, who did not have a pair of tie tongs, used a long-handled shovel to push the tie.

According to the Claimant's testimony, he was using the shovel not only because there wasn't another pair of tie tongs available, but, also because he had to clear dirt out of the way of the tie in order to move it down the track into position.

Around 11:00 a.m., the Claimant felt a strain in his back and felt he may have suffered an injury. It is unclear whether he informed his Foreman of the accident during his shift that day, although the Claimant testified that he had informed the Foreman. However, the evidence shows that the Claimant did report the accident to the Roadmaster later that evening.

CARRIER'S POSITION

The Carrier claims that the Claimant failed to use the proper tool in trying to move the ties into position. They argue that the Claimant was aware that one of the other workers had a pair of tie tongs in his truck which the Claimant should have retrieved for his use. The Carrier believes that if the Claimant had used the proper tool, the injury could have been prevented. They argue that the Claimant's failure to use the proper tools was a violation of their rules and the penalty issued was reasonable.

ORGANIZATION'S POSITION


The Organization claims the evidence demonstrates that the Claimant believed he performed his job in a safe manner while using a long-handled shovel. They claim it made sense since the Claimant had to clear dirt away before the tie could be moved across the rail and into place. Besides, they argue, there was no job briefing at the work site to direct the Claimant on what tools to use or on how to do the job.

There is no doubt it would have been advisable for the Claimant to have obtained and used the tie-tongs in moving the ties on the day in question, especially since the tie-tongs were available. In all probability his failure to use the tongs contributed to his injury. In view of his culpability, it is reasonable that he should be issued some discipline. However, the Board believes there are two mitigating factors which must be considered.

The Claimant has been an employee with the Carrier since August 16, 1971. During that period, he has had no personal injuries and no disciplinary actions on his record. Because of this there is no reason to believe that a lesser penalty would not serve the purpose of encouraging the Claimant to comply with the safety rules in the future, including the requirement to utilize the correct tools in order to prevent injury.

AWARD

The claim is sustained in part, the five (5) day suspension without pay is to be reduced to a one (1) day suspension without pay. The Claimant is to be reimbursed any loss in wages and/or benefits between the one (1) day suspension without pay and the five (5) day suspension without pay.



Carol J. Zamperini, Neutral

Submitted this 30th of January, 1998.
Denver, Colorado