

SPECIAL ADJUSTMENT BOARD NO. 947

Award No. 19
Case No. 19

PARTIES
TC
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Southern Pacific Transportation Company (Western
Lines)

STATEMENT
OF CLAIM

1. That the Carrier's decision to assess Claimant's personal record sixty (60) demerits on unproven allegations was unduly harsh, in abuse of discretion and in violation of the current Agreement.
2. That because the Carrier failed to prove the charges by introducing substantial evidence that it now be required to expunge the demerits from Claimant's personal 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.

From evidence adduced at a formal hearing held on February 27, 1986, the Carrier issued 60 demerits to Mr. M. G. Borjorquez, Welder, for failing to inspect, discard, or replace defective tools, the use of which resulted in a personal injury to Laborer, C. Nerey, on January 2, 1986. The Carrier believed the

facts demonstrated that a piece of metal from a defective hot cut chisel hit the Laborer in the face while he was assisting the Welder in trimming excess slag from a weld. Because it was felt the tool should have been inspected and either repaired or discarded, Mr. Borjorquez was held responsible for violating:

Rule A

Safety is of the first importance in the discharge of duty. Obedience to the rules is essential to safety and to remaining in service.

Rule D

Employees must cooperate and assist in carrying out the rules and instructions, and must promptly report to the proper officer any . . . condition or practice which may imperil the safety of . . . employees, . . . and any . . . negligence affecting the interest of the Company.

Rule 990

CARE OF TOOLS: Employees in charge of and using tools must take care of them and see that they are in serviceable condition at all times. Defective tools must be replaced. . . .

On the record, the three men directly involved in the incident, Mr. Gonzalez, Foreman, Mr. Borjorquez, Welder and Mr. Nerey, Laborer, denied the hot cut chisel introduced at the hearing was the one in use when Mr. Nerey was injured. Mr. Olvera, Roadmaster, testified he secured the chisel the day after the incident and was told by Mr. Gonzalez and Mr. Nerey it was the chisel used the day before.

The burden of proof lies with the Carrier. Unfortunately, the Roadmaster, who was anxious to get his worker to the doctor, failed to retrieve the hot cut chisel at the scene of the

injury. Evidence obtained a day after an accident is more or less "stale"; items can become lost or misplaced in the interim. As a result, in this case, the Carrier's position is tainted. In addition, Mr. Olvera's testimony was contradicted by both Mr. Nerey and Mr. Gonzalez the day of the hearing. Because of all this the Carrier has failed to meet its burden in this case.

AWARD

The Claim is sustained. The Carrier is to expunge the sixty (60) demerits from the personal record of M. G. Borjorquez.

ORDER

The Carrier shall comply with this Award within thirty (30) days from the date issued.


Carol J. Zamperini, Neutral

Submitted:

August 26, 1986
Denver, Colorado