

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 191
Award No. 191

Claimant: A. S. FLORES

STATEMENT
OF CLAIM

1. That the Carrier's decision to assess Claimant a thirty (30) 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 notified by letter dated October 7, 1996, to report to the office of the Roadmaster, Bakersfield, California, at 9:00 a.m., Thursday, October 17, 1996 for a formal investigation. The purpose of the hearing was to determine whether he had violated Carrier Rules 10.1 and 10.3 of the Rules and Regulations for Maintenance of Way and Engineering, particularly those portions cited below:

Rule 10.1 (M) Authority to Enter CTC Limits

CTC limits are designated in the timetable. A machine, track car or employee must not enter or occupy any track where CTC is in effect unless:

-The control operator grants track and time under Rule 10.3 (Track and Time).

Rule 10.3 (M) Track and Time

. . . Limits designated by a switch extend only to the signal governing movement over the switch unless otherwise designated.

After reviewing the evidence produced at the hearing, the Carrier determined that the Claimant had violated the cited rules. He was issued a thirty (30) day suspension.

The Claimant is a Track Supervisor and has been employed with the Carrier for over 34 years. On Friday, October 4, 1996, the Claimant went on duty at 7:00 a.m. at Tulare, California and off-duty at 5:30 p.m. at Goshen, California. At approximately 1:30 p.m., at Traver, California, the Claimant who had Track and Time from West Goshen to East Traver, encountered the Tulare Local on the main line as he approached the east switch at Traver. He was nearly out of track time when he realized that the dispatcher had lined the switch so that he could enter the siding. He made contact with the dispatcher, but lost contact once someone walked over him. He entered the siding and at that time regained communications. He told her that he was in the siding and she asked him how he had obtained track time for the siding, which he had not done. Shortly afterwards she did give him the track time. At that point, the Claimant gave up his Track and Time on the main line and the Tulare Local continued on its run.

The Claimant went on to the West end of Traver and got Track and Time into Kingsburg. In the meantime, the dispatcher called the Roadmaster and reported that the Claimant had violated the rules on Track and Time. The Roadmaster contacted the Claimant and told him to meet with him at Kingsburg.

CARRIER'S POSITION

The Carrier contends that the Claimant violated the cited rules by not obtaining track and time before entering the siding at east Traver. It was only after he entered the siding that he obtained the track and time.

ORGANIZATION'S POSITION

The Organization argues that the Claimant did the only safe thing he could have done. After all, they say, when the Claimant got to the East Traver siding, the Tulare Local was facing him on the main line. They point out that since he was nearly out of track time and the switch was aligned to enter the siding, he proceeded to get off the main track. The Organization claims

that the Claimant first tried to contact the dispatcher, but, was walked on and the dispatcher hung up. It was only after he entered the siding that he reached her and could ask for permission to have time in the siding. The Organization contends that this problem happens frequently and presents a problem to employees. They argue that the Claimant did what he should have done to save the Carrier money. Furthermore, they argue, the actions of the Claimant could not have caused an accident.

DECISION

The Board has reviewed the evidence. There is no dispute as to the facts. It seems the Claimant arrived at the switch at East Traver and realized he was running short of track time. Simultaneously, he saw that the Tulare Local was on the other side of the signal waiting to proceed. In unrefuted testimony, he said he attempted to contact the dispatcher, but, she hung up when he got walked over by someone else on the line. Obviously, the track was aligned for his entrance into the siding and he proceeded. Clearly, the Claimant believed he was doing the best thing for everyone. He immediately contacted the dispatcher once he entered the siding. At that time, he was given clearance. There was no evidence presented that he prevented someone else from entering the siding or caused a troublesome delay, in fact just the opposite. Although admittedly, on another day, the circumstances could be different.

The Organization raises a valid point, besides the obvious (getting permission before entering the siding), what should the Claimant have done when he could not make contact with the dispatcher and was running out of track time and was preventing another train from proceeding. If there is a set procedure, the Carrier did not present it during the investigation in response to the Organization's inquiry.

The penalty issued to the Claimant was excessive under the circumstances here.

AWARD

The suspension is to be reduced to a 5 day suspension; the Claimant is to be reimbursed the difference in wages and benefits he lost in the 30 day suspension and the 10 day suspension.



Carol J. Zamperini, Neutral

Submitted this 27 th of February, 1998.
Denver, Colorado

