

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 192
Award No. 192

Claimant: G. F. YAZZIE

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.

A charge letter was sent to the Claimant dated November 21, 1996. He was advised to attend a formal investigation to be held at the office of the Roadmaster in Bakersfield, California, Friday, December 6, 1996, beginning at 9:00 a.m. The purpose of the hearing was to determine if the Claimant was in violation of the Carrier's rules, when on October 24, 1996, he injured himself while attempting to adjust the Adzer stabilizing legs in the vicinity of MP 332.60 off the No. 1 track at Ilmon. The Carrier cited the following portions of the 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.

1.6 Conduct

Employees must not be:

1. Careless of the safety of themselves or others;
2. Negligent. . .

27.3 Working On

Employees must not position themselves under any raised machine unless proper support stands or blocking are in place.

71.1.3 All work must be performed in a manner that complies with company rules, departmental instructions, guidelines, and standards.

72.13.22 Operators must not allow themselves or any employee to enter under or between any portion of raised attachments or equipment until it is securely and safely blocked and secured from lowering or falling.

72.14.17 Stay out from under suspended loads and the crane boom at all times.

The hearing commenced on December 6, 1996. However, because the Claimant was not in attendance and at the request of the Organization, the hearing was continued to December 16, 1996, to provide the Organization with enough time to determine the intentions of the Claimant.

The Claimant, once again, chose not to attend the hearing on December 16, 1996. The Carrier established the fact that he had been properly notified by introducing the signed receipt from the certified charge letter.

On the day of the accident, the Claimant was operating the Adzer. In order to change the bits on the Adzer, it had to be lifted with a Speed Swing and set off the track. The Claimant and the Speed Swing operator did this, but, the Adzer was facing in the wrong direction. They lifted the machine again and spun it around and set it down on its legs. When they set the Adzer down the second time one of the legs bent and they corrected it. At the direction of their Foreman, they had wrapped a chain around the Adzer so that they could more easily place it at an angle with the working head up. The Claimant wrapped the chain around the machine, but, used tongs to attach it to one end of the frame. The machine had to be raised a third time in order to place the pin back into the leg. When the Claimant moved under the Adzer to replace the safety pin, the tong slipped and the slack came out of the chain and the Adzer dropped about two or three inches. When it did, the frame of the seat struck the Claimant injuring his shoulder.

CARRIER'S POSITION

The Carrier argues that the Claimant was told to use the chain to secure the frame of the Adzer before it was lifted. They contend that the Claimant did not follow instructions. Instead, he tried to secure the chain to the frame using tongs. Since there was no lip on the frame, the tongs did not hold. The Carrier claims that the Claimant was in a position to see this and should have taken the necessary precautions.

ORGANIZATION'S POSITION

The Organization points out that at no time was the Claimant and the Speed Swing operator told to take additional safety precautions by using something like ties under the Adzer to provide additional support. Rather, they argue, the two were simply told to use the chain in lifting the machine, which they did. Furthermore, the Organization points out that the two were given no particular instructions on how to attach the chain.

DECISION

If the Claimant had any doubts about how to connect the chain to the frame of the Adzer, he should have asked. In any event, the Board believes the Claimant should have checked the chain before the machine was raised by the Speed Swing. If he had been more observant, he would have noticed that the frame did not have a lip which the tongs could grip. He was the one closest to the machine and was the one who connected the chain.

The Claimant, who did not attend the hearing, offered no explanation that contrasted the evidence presented by the Carrier. Even though the Organization offered a valid suggestion regarding additional support, there is no guarantee that even if

the additional support had been used it would have prevented the chain from slipping and the machine from falling the two or three inches. Therefore, it is hard to predict whether the extra support would have helped in this case.

Based on the evidence presented at hearing, the Board believes the penalty issued was appropriate.

AWARD

The claim is denied.



Carol J. Zamperini, Neutral

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