

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 193

Award No. 193

Claimant: J. H. DODSON

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 Disciplinary Letter of Instruction (as opposed to an educational letter of instruction) 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 hand delivered to the Claimant on December 2, 1996. He was advised to attend a formal Investigation to be held at the Union Pacific Railroad Yard Office, Eugene, Oregon, on December 16, 1996. The purpose was to determine if the Claimant had failed to follow Company rules and regulations on November 27, 1996, at approximately 10:00 a.m., at Eugene, Oregon, when he allegedly failed to shut the valve on both sides of the disconnect points on a chemical pump line, and also allegedly failed to wear proper eye protection while performing his duties. The particular rules cited include:

1.1 Safety

Safety is the most important element in performing duties.

Obedying 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 and 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.

18.3 Eye Protection

Type of Safety Eyewear to be worn:

- (20) Handling acids or other chemical solutions. Face Shield and Eye Protection

Special Equipment/Special Requirements/Remarks
Cover type goggles must be used with face shield.

The hearing was postponed until January 22, 1997.

After reviewing the evidence produced at the hearing, the Carrier upheld the charges against the Claimant and issued him a Letter of Instruction.

On the day of the accident, the Claimant and a co-worker went on duty at 7:00 a.m. and off duty at 3:30 p.m.. At their morning briefing they were assigned to repair a sander and then were sent to the fuel area to calibrate the Nalco 22 chemical pump. The equipment pumped a formaldehyde based fungicide into the fuel line. The chemical was extremely caustic. When they arrived at the fuel area they checked the pressure gauge and discovered that it registered zero. Therefore, they assumed there was no pressure in the lines. As a result, they did not shut off the valves to the lines at either end. When the Claimant loosened the nut on the pipe, the pipe was stuck, but, apparently broke loose from some pressure. When this happened, the fluid splashed onto the Claimant's face and got into his eyes.

The co-worker took the Claimant to the service truck and then to the Plant Manager's office to wash out his eyes. The Claimant did require medical treatment following this incident.

CARRIER'S POSITION

The Carrier argues that the Claimant was familiar with the chemical and knew how dangerous it was. They point out that during the morning briefing, the necessity of using a face shield

was emphasized. The Carrier contends the two employees should have taken the necessary precautions of using the protective gear, as well as, closing the shut off valves. They claim that the injury would have been avoided if the two employees had complied with the safety requirements.

ORGANIZATION'S POSITION

The Organization contends that face shields were not readily available on the day of the incident. Furthermore, they argue that the Claimant wore the safety equipment the Carrier had provided and which he thought was suitable considering there was no pressure in the line. The Organization also contends the employees did take precautions. Before they began their work, they checked the pressure and called the pumping station to make sure no one attempted to pump fuel through the lines while they were making the adjustments. The Organization also points out that the face shields that are available do not work with the hard hats that are worn by the employees. On the day of the accident, the Organization claims that the Claimant loosened the nut slowly and checked for leaks. If there had been obvious pressure in the line, it should have shown up at that point. Since it did not, they argue, the Claimant proceeded. They contend the pressure in the line was so slight the fuel hardly raised above the fuel line.

DECISION


The Board believes the fact that the accident happened, is substantiation that the Claimant needed to use the face shield. This appears to be a classic case of not taking the absolute precautions recommended in dealing with caustic chemicals. The Claimant admitted he knew the dangers involved. If nothing else, the two employees should have closed the shut off valves. This would have at least worked in their favor. If the face shields are inadequate, the employee should have conveyed their concerns to the Carrier. There is no evidence that was ever done. It is imperative that when safety equipment is not effective, employees point that out to management, or to the Organization if the problem is not corrected once it is reported to the appropriate management employee.

The Board cannot accept the Organization's argument that there was very little pressure in the line when it was released by the Claimant. If that had been the case, the liquid would have leaked from the pipe rather than spray up and hit the Claimant's hard hat and his face.

The Board believes the Claimant must learn to use maximum protection when working with caustic chemicals. The penalty issued was reasonable under the circumstances.

AWARD

The claim is denied.



Carol J. Zamperini, Neutral

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