

## SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 194  
Award No. 194

Claimant: T. J. WALSH

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 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 rescind the Disciplinary Letter of Instruction, 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.

On December 4, 1996, the Carrier hand delivered a charge letter to the Claimant. He was advised to attend a formal investigation on Monday, December 16, 1996. The purpose of the hearing was to develop the facts to determine if the Claimant was responsible for violating Rules 1.4 and 1.1 of the Safety and General Rules For All Employees, effective April 10, 1994. The cited rules read as follows:

#### 1.4 Carrying out Rules and Reporting Violations

Employees must cooperate and assist in carrying out the rules and instructions. If an employee sees another employee engaging in an unsafe practice it is their responsibility to point out the hazard involved. They must promptly report any violations to the proper supervisor. They must also report any condition or practice that may

threaten the safety of. . .employees,. . .and any misconduct or negligence that may affect the interest of the railroad.

Any employee observing another employee's condition, which would interfere with their ability to perform assigned duties, must promptly report condition to the proper supervisor.

### 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.

The hearing was postponed and eventually took place on January 22, 1997.

According to the testimony, on the day in question, the Claimant and a co-worker, went on duty at 7:30 a.m. and off duty at 2:30 p.m.. On that morning they were given their job briefing. They were assigned to repair a sander and then were to calibrate and check a pump on a contained system which injected a fungicide (formaldehyde based) into the fuel. The day before, the Foreman noticed that the diesel holding tank was inexplicably empty. When he returned to the shop later that day, he ordered that the pump be checked out and calibrated if necessary.

Normally, this type of work would have required wearing protective clothing, as well as, a face shield and helmet. However, according to the testimony of the Claimant, he and the co-worker upon arriving at the site, checked the gauge and found that it read zero. Therefore, they did not close any valves and decided there was no need to wear a face shield. The Claimant testified that he then called the pipeline company and determined that they were not pumping at the time. He advised them that they would be doing work on the system and asked them to refrain from pumping until he called them back. According to the Claimant's account of the conversation they agreed. While the Claimant was at the phone and watching the gauge, the co-worker cracked the nut on the line. When he noticed that there was no leakage, he loosened the nut completely. It was then that the fuel erupted from the line splashing onto his face and into his eyes.

The Claimant went to the co-worker's aid, took him to the truck and then to the eye wash station at the service track.

The Claimant was disciplined for not making sure the co-worker wore the proper protective equipment.

#### CARRIER'S POSITION

The Carrier argues that there was protective equipment available for the employees. Their failure to use the necessary equipment caused an injury to the Claimant's co-worker. The Claimant had a responsibility, to be sure that his co-worker used the proper protective equipment. Safety is a primary concern of the Carrier and the Claimant violated safety rules. The Letter of Instruction was appropriate.

#### ORGANIZATION'S POSITION

The Organization contends the Claimant was penalized simply because he was at the scene of the accident and had knowledge of the accident. They argue that nothing in the testimony presented at the Investigation proves that the Claimant was in violation of anything. The Organization holds that the employees conducted the preliminary tests and determined there was no pressure in the lines. The Claimant they claim also took the necessary precautions to assure no one was pumping fuel through the line at the time. That being the case, they assert, the employees were wearing the appropriate protective equipment. In any case, the Claimant did nothing that would warrant tarnishing his employment record. The charges should be removed from his record.

#### DECISION


The Board would point out that the main reason for safety rules is the prevention of accidents and injury. If, as the Claimant contends, gauges vary and the gauge in question had shown some fluctuation in the past, then the employees should have been even more skeptical on the day they looked at the gauge and saw it registered zero pressure. Furthermore, they knew the fuel was caustic and had to be handled with care.

They had access to the appropriate safety equipment and had the obligation to wear it. The Board further concurs with the Carrier that the Claimant had the obligation to be certain that the co-worker was wearing the appropriate gear, especially since it was the co-worker who was directly exposed to the fuel leak.

The Board believes the Letter of Instruction was appropriate.

AWARD

The claim is denied.

  
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Carol J. Zauperini, Neutral

Submitted this 27<sup>th</sup> of February, 1998.  
Denver, Colorado