

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 197
Award No. 197

Claimant: T. S. CHAPA

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 sixty (30) calendar 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.

On February 10, 1997, the Carrier notified the Claimant by letter to appear at a formal Investigation on February 20, 1997, in Tucson, Arizona. The stated purpose of the hearing was to determine whether the Claimant violated Rules 1.6 and 1.7 of the Southern Pacific Lines Safety and General Rules for All Employees, particularly those sections reading:

1.6 Conduct

Employees must not be:

6. Quarrelsome

7. Discourteous

Any act of hostility, misconduct. . .affecting the interests of the Company or its employees is sufficient cause for dismissal.

1.7 Altercations

Employees must not enter into altercations with each other, play practical jokes, or wrestle while on duty or on railroad property.

After reviewing the transcript of the hearing, the Carrier concluded that the Claimant violated the cited rules. By letter dated March 4, 1997, the Claimant was advised that he was suspended for thirty (30) days effective March 8, 1997 through April 6, 1997.

The incident which precipitated the charges against the Claimant occurred on February 5, 1997, near Bosque, Arizona. On that day, the Claimant was allegedly involved in an altercation with a co-worker. At the time, both employees were Spiker Gauge Operators on the T-3 Tie Gang. The Manager of Track Programs was notified that the two employees were involved in an altercation around 7:30 a.m. that morning. He was told the incident followed an argument between the two employees.

The Manager immediately went out to the work site and met with the two employees. Initially he attempted to "work things out" by getting the two men to reconcile and apologize. By all accounts, they did this half-heartedly. Later that morning the Claimant asked to speak to the Manager. At that time, he told him that he did not believe the Manager realized the severity of the altercation. He explained that he had been pushed down so hard by the co-worker that his glasses flew off and were broken.

After hearing the Claimant's account of the disagreement, the Supervisor continued his investigation. The inquiry revealed that the altercation occurred after the co-worker urinated next to the front door of the Claimant's car. Immediately after, the Claimant urinated on or near the co-worker's truck. Evidence showed that while the Claimant was in the process of urinating, the co-worker ran towards him and shoved him from the back so hard he fell forward to the ground. His glasses were knocked off and broken.

The co-worker was considered the aggressor and was removed from service. He was suspended for sixty (60) days. The Claimant was left in service. However, after reviewing the evidence from the hearing, the Carrier suspended him for thirty (30) days.

CARRIER'S POSITION

The Carrier contends that the Claimant violated the cited rules when he engaged in the altercation with the co-worker. Such behavior clearly violates the rules of the Carrier. The penalty issued was justifiable.

ORGANIZATION'S POSITION

The Organization argues that the entire incident has been blown out of proportion. They argue that differences arise and are presented and solved differently with every person that's on a gang. The Claimant, as well as, the co-worker, are good employees and good workers. They have learned a lesson in this situation. The Claimant while a part of the altercation, did his part to dissolve the conflict when he walked away without retaliating after he was knocked down by his co-worker.

The Organization urges the Board to clear the Claimant's record and reimburse him for any and all wages and benefits lost as a result of his suspension.

DECISION

The Board has reviewed the facts of this case carefully. When analyzed in conjunction with the Claimant's employment record, we find that the Claimant has demonstrated either an inability or an unwillingness to modify his behavior. He has been disciplined numerous times over the years and still fails to conform to the conduct rightfully expected. Even though he was not the aggressor in the altercation, he contributed to the escalation of the matter when he urinated on or right next to the co-worker's car. This type of childish behavior is unacceptable and could have lead to serious injury to one or both of the employees.

Under the circumstances, the Board believes the penalty issued in this case was appropriate.

AWARD

The claim is denied.


Carol J. Zamperini, Neutral

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