

SPECIAL ADJUSTMENT BOARD NO. 947

Award No. 20

Case No. 20

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Southern Pacific Transportation Company (Western
Lines)

STATEMENT
OF CLAIM

1. That the Carrier's decision to suspend Claimant for a period of three (3) days, effective May 12 through 14, 1986, was unduly harsh, in abuse of discretion and in violation of the current Agreement.
2. That because the Carrier failed to prove the charges by introducing substantial evidence that it now be required to compensate Claimant for all wage loss suffered and remove the charges 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 April 9, 1986, the Carrier held a formal hearing in connection with the personal injury of Mr. James A. Clark. The injury occurred on March 17, 1986 while Mr. Clark was attempting to move a drum of boutet charges on the back of truck W838. In

his effort to manually walk the drum 3-4 inches, his hands slipped off the drum and he fell backwards off the truck. His left wrist was fractured as he tried to break his fall with his left arm.

As a result of the hearing the Carrier charged the Employee with a violation of Rule I which reads:

Employees must exercise care to prevent injury to themselves or others. They must be alert and attentive at all times when performing their duties and plan their work to avoid injury.

He was issued a three (3) day suspension for his responsibility in the accident.

It is always easier, after the fact, to discern ways in which an accident could have been avoided. The question here is whether or not Mr. Clark used less than normal care in preventing this accident. We are not convinced he did. Certainly the boom which was used in placing the drum initially could have more easily moved the drum. However, it was not available and even though there was a winch on the truck, Mr. Clark in his judgement viewed it inadequate since there was no place on the drum to which it could be attached. The Carrier produced no substantial evidence Mr. Clark was especially careless or had alternatives available which were significantly better than the one he chose. There is no evidence he had been instructed not to move drums in such a way, nor was there any evidence he was ever warned about being careless or using poor judgement. In

view of these facts and in view of Mr. Clark's apparent clean record, the actions taken by the Carrier were excessive and without Cause.

AWARD

The Claim is sustained. Mr. Clark is to be compensated for all wage loss suffered as a result of the above three (3) day suspension and his record is to contain nothing more than reference to his personal injury relative to this incident.

ORDER

The Carrier is to comply with this Award within thirty (30) days from the date of its submission.


Carol J. Zamperini, Neutral

Submitted:

August 27, 1986
Denver, Colorado