

SPECIAL ADJUSTMENT BOARD NO. 947

Award No.5
Case No. 5

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

1. That the Carrier violated the provisions of the Agreement when, following a formal hearing which took place on March 1, 1983, the Company suspended Mr. Richard Leon Stark, Crane Helper, for a period of thirty (30) calendar days, effective March 10, 1983 through April 10, 1983, for allegedly violating that portion of Rule 801 dealing with dishonesty, said action being without basis.
2. That Richard Leon Stark be compensated for all time lost as a result of his suspension and that his record be expunged of any reference to the incident.

FINDINGS

Upon reviewing the record, as submitted, I find that the Parties herein are Carrier and Employee with 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 January 30, 1983, Mr. David Raymond Voris, District Maintenance of Way Manager, who is headquartered in Eureka, California, was contacted by Richard Stark by telephone. Mr. Stark explained he had suffered a personal injury. At that time, Mr. Voris asked him where and when the accident occurred.

Mr. Stark could not describe the location of the accident nor when it took place. He did say he wanted to fill out an Accident Report. The Grievant filled out an Employee's Report of Accident, form 2611, listing the date of accident as January 29, 1983, and where the form asked how the accident happened he wrote that his doctor's opinion was "the knee had had too much strain". After discussing the Report Form with Mr. Olenik, Chief Clerk to Division Engineer at Willits, and being told that without a specific date and time of accident, there would be no on-the-job injury, the Grievant filled out a second Report Form listing the date of the accident as January 26, 1983. This time the cause of the accident was listed as "The knee started hurting and got worse each day". In the interim, Mr. Stark had been receiving medical attention, including therapy for his right knee. In one doctor's report, the pain in his knee was attributed to heavy labor associated with climbing and pulling heavy loads. The report stated his knee had bothered him for one and one-half (1 1/2) weeks. A second doctor's report stated the injury happened when the Grievant jumped from a crane and had been bothering him for two weeks. After reviewing all the submissions pertaining to Mr. Stark's injury, the Company, sent a letter to Mr. Stark, which said in part:

You are hereby directed to be present . . .
.for a formal hearing in conjunction with
your filing of an alleged deceptive personal
right knee injury report on January 31,
1983, which you claim occurred on January
29, 1983 and the filing of a second alleged
deceptive report for the same injury on
February 4, 1983, which you claim occurred
on January 26, 1983.
In connection with the foregoing alleged

occurrence, you are hereby charged with responsibility, which may involve violation of that portion of Rule 801 of the General Rules and Regulations of the Norrthwestern Pacific Railroad Company, reading:

Rule 801: "Employes will not be retained in the service who are. . . . dishonest

The Grievant was held in service until after the formal hearing, but afterwards was suspended for a period of thirty (30) calendar days.

The Grievant was employed by the Company for six and one-half years as a laborer, including one year during which he was furloughed. Other than several incidents of personal injury, mostly minor, he has had a very good employment record. There has been no warnings or other disciplinary actions taken against the Grievant for any reason. In this case there was nothing which would indicate the Grievant was attempting to lie about his injury. He stated from the start he did not know when the injury could have occurred, but it became progressively worse. It is not unusual for injuries to occur almost unnoticed with pain starting later on. If Mr. Stark intended to lie about his injury, he surely would have been better prepared when he first contacted Mr. Voris. Perhaps the Grievant was slightly careless and not very observant, but there is no evidence to support the Company's contention that Mr. Stark was being dishonest. This is further emphasized by the fact, the two doctor's reports submitted by Mr. Stark lists slightly different causes for his

SBA No. 947
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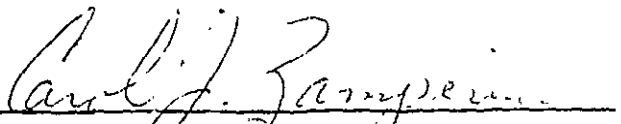
knee injury. If he had cited a specific cause of injury to the doctor's they would have used the same reason on both forms, they did not.

AWARD

The claim is granted; Mr. Stark is to be compensated for all time lost as a result of his suspension for the above described incident.

ORDER

The Company is to comply with this order within thirty (30) days of its issue.


Carol J. Zamperini, Neutral

Denver, Colorado
June 21, 1984