

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - Billy Ray Norman  
Award No. 53  
Case No. 53

PARTIES  
TO  
DISPUTE

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

STATEMENT  
OF CLAIM

That the Carrier's decision to suspend Claimant from its service for a period of two (2) days, (July 13 and 14, 1987) was excessive, unduly harsh and in abuse of discretion, and in violation of the terms and provisions of the current Collective Bargaining Agreement.

That because of the Carrier's failure to prove and support the charges by introduction of substantial bona fide evidence that it (the Carrier) now be required to compensate Claimant for all wage loss 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.

The Claimant was operating a backhoe on May 28, 1987. While he was attempting to clear some berry bushes away from the track

area, his backhoe tilted and nearly overturned. The Claimant, who was not wearing a seatbelt was almost thrown from the vehicle. The tractor did right itself and the Employee continued his work.

The next day, the Carrier sent the Claimant a letter telling him he was being disqualified in Class 18, Utility Tractor Operator. The letter itemized several instances which the Carrier believed proved that the Employee was incapable of operating the backhoe, included was the occurrence of the previous day.

On June 2, 1987, the Claimant was notified that a formal hearing would be held on June 9, 1987, to determine whether or not the Claimant had violated rules of the Maintenance of Way and Structures of the Southern Pacific Transportation Company while operating the backhoe on May 28, 1987.

By letter dated July 8, 1987, he was advised the evidence adduced at the hearing was sufficient to show he had violated:

Rule A:

Safety is of the first importance in the discharge of duty. Obedience to the rules is essential to safety and to remaining in service.

Rule I:

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.

## Rule 1041:

RESPONSIBILITY: They will be held responsible for the safety. . .and performance of the machines to which they are assigned. . .

## Rule 5010:

All protective equipment. . .furnished by the Company must be used. . .Such equipment must be used where conditions of the job require, and in accordance with instructions.

## Rule 5035:

Where seatbelts are provided in Company. . .vehicles, each passenger is responsible for wearing them.

The Claimant was further advised he was being suspended for two (2) days.

This Board has rather consistently refused to condone the use of disqualification as discipline. It is inappropriate to remove someone from a Class for which he has qualified because he is in violation of the Rules and Regulations of the Maintenance of Way and Structures. However, in this case, the Carrier has supported its actions of disqualification with specific incidents which demonstrate that the Claimant may not have achieved sufficient skill in operating a Utility Tractor. This Board cannot find fault in the Employee's disqualification for this reason.

The evidence gathered at the hearing also showed the Claimant failed to utilize the seatbelt on the backhoe he was operating on May 28, 1987. The rule is quite explicit. If there is a

seatbelt on the equipment provided by the Carrier the seatbelt must be worn. The fact the equipment was rented is not relevant, it was still provided by the Carrier and it did have a seatbelt. The Claimant's failure to wear the seatbelt was a violation of the rules. In view of the Claimant's injury record, he should take every precaution to avoid injury.

The penalty issued was not excessive, however, it is troublesome that the Foreman who worked right beside the Claimant on the day of the incident never once directed him to wear his seatbelt. He not only allowed the Employee to operate the equipment without a seatbelt, but he did not correct the situation after the accident. It appears to this Board that the Foreman should share some of the responsibility in the Claimant's violation. When supervisors are remiss in correcting the misactions of their subordinates, it appears they are condoning the behavior.

#### AWARD

The claim is sustained in part; the two (2) day suspension is reduced to a one (1) day suspension. The Claimant is to be reimbursed the difference in wages and benefits.

Carol J. Zamperini, Neutral

Submitted:

February 17, 1988  
Denver, Colorado