

## SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - J. A. Garcia  
Award No. 56  
Case No. 56

PARTIES  
TO  
DISPUTE

Brotherhood of Maintenance of Way Employes  
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 one (1) day 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 sustain and support the charges by introduction of substantial bona fide evidence that the Carrier now be required to compensate Claimant for all loss of earnings he 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 Employes 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.

After conducting a hearing on August 7, 1987 at Eugene, Oregon, the Carrier determined the Claimant was in violation of

the Rule A and Rule I of the Rules and Regulations of the Maintenance of Way and Structures of the Southern Pacific Transportation Company. The rules read:

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:

Employes 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.

The Claimant received a letter dated August 24, 1987, advising him he had been suspended for one (1) day, September 1, 1987.

On June 25, 1987, the Claimant was loading kegs of spikes onto a push car. As he was maneuvering one keg into place, his arm brushed another keg and either a rough part of the keg or something protruding from the keg cut his arm. The injury was severe enough to warrant stitches. He was taken to the doctor for medical treatment although he did not want to seek medical help or report the accident.

This Board has always recognized that some accidents are unavoidable. Certainly this accident wasn't intentional. The work associated with the work of the Maintenance of Way almost always has an element of risk. It's inherent in the job.

Because the possibility of injury is almost continuously present, employees need to be constantly alert.

It seems in this case, the Claimant, while not careless in the true sense, was not as observant as he should have been. His record indicates he has had numerous accidents over his twenty-two (22) years of service, several resulting from a lack of attentiveness on the part of the Claimant. The Claimant has been cautioned concerning his personal injuries at least three times.

Sometimes in order to protect the safety of employees, as well as, the interests of the Employer, it is necessary for the Carrier to institute discipline against an employee who seems to have lapses of concentration while doing potentially dangerous work. The failure of the Carrier to discipline the Employee for his lack of attention may well result in a more serious injury to the Employee.

In considering all the facts of this case and the Claimant's record, this Board believes the one (1) day suspension was justified.

AWARD

The claim is denied.

Carol J. Zamperini  
Carol J. Zamperini, Neutral

Submitted:

February 5, 1988  
Denver, Colorado