

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - M. A. McCloud
Award No. 61
Case No. 61

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 five (5) days 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 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 October 12, 1987, the Claimant was working wth Crossing Gang, C6 at Klamath Falls. According to the the Foreman of the

gang, the Claimant and one other crew member were working on the Joe Wright Road crossing removing the crossing planks in order to replace the crossties underneath. The process was to pull up a plank, set it on the thicker of its two sides and then force the long screws up until the pointed edge was flush with the bottom side. It appears that they had been doing this work during the entire morning. It was around 12:05 p.m., when the Claimant and his co-worker were working at this site. A backhoe had pulled the plank from its position and they were in the process of uprighting the plank onto its edge. The Claimant's co-worker was operating the boom truck and would hoist the planks on end with the crane. Afterwards, the Claimant would walk over to the plank and straighten the lag screws which were bent as they were pulled across the asphalt by the backhoe. In this instance the tongs holding the edge of the plank slipped and the plank started falling toward the Claimant. He attempted to prevent the fall with his leg, but was unsuccessful. The plank fell toward him. He was forced to the ground with the plank resting on top of his leg.

The Employee was taken for medical treatment. The Claimant was still unable to work at the time of the investigation, one and one-half (1 1/2) months later. The prognosis was that he would be off for five (5) to six (6) additional weeks.

By letter dated December 16, 1987, the Claimant was notified he was being suspended for five (5) days because the

evidence adduced at a formal hearing was sufficient to find him responsible for violating:

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 5001:

Safety is of the first importance in the discharge of duty.

Rule 5028:

Hands, feet and all other parts of the body must be kept in a position where they cannot be struck by, caught under or between materials, tools or equipment.

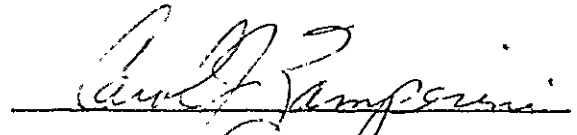
This Board has reviewed the matter in this case and has determined several things. The Claimant was performing his work in a manner which had received at least tacit approval from his supervisors. He was utilizing a system which had not only been used throughout the morning, but according to testimony had been used for years. While the Claimant should have been more alert, he believed the crane operator had the plank stabilized before he approached it. Unfortunately, the plank was probably placed

on an irregular surface. The accident may well have been avoided if the two men had been more observant. In this regard, there was a lack of alertness. However, I think the responsibility was shared by those involved.

The Claimant had thirteen (13) years of tenure at the time of the accident. He has been issued 30 demerits in 1977 and 15 demerits in 1985. He has no other disciplinary actions on his record and he only has one recorded injury on his record during his tenure. Up until this accident, he had no lost work time as a result of injury during his thirteen years with the Carrier. The Carrier has proved he was not as alert as he should have been, but they have not shown he was solely culpable for what happened. He certainly was not responsible for holding the plank in place with the crane. Nor was he doing the job in an unusual or unapproved manner. For all of these reasons, this Board believes the discipline was excessive.

AWARD

The Claim is sustained in part; the five (5) day suspension shall be removed from the Claimant's record and he shall be reimbursed for all wages and benefits lost as a result of the suspension. His record shall be assessed thirty (30) demerits


Carol J. Zamperini, Neutral

Submitted:

February 12, 1988
Denver, Colorado