

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - Gilbert W. Pasqua  
Award No. 67  
Case No. 67

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 assess and place on Claimant's personal record forty-five (45) demerits, 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 Carrier now be required to remove the forty-five (45) demerits from Claimant's personal record, 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 worked as a Track Laborer for the Carrier. On October 27, 1987, he was employed on a per diem basis. When an employe is on per diem, he is responsible for obtaining his own

lodging and meals. According to the Agreement between the Parties, the Carrier provides a certain amount of money to per diem employees in addition to their salaries to help defray these expenses.

During the early evening of October 27, 1987, a Special Agent was notified by a Crew Dispatcher, that a man had checked into the modular housing units which the Carrier provided to some of its employees who were not per diem. When the Agent checked out the situation, he found the Claimant had checked into the units. According to the testimony of the Agent, the Employee said he had received permission from his supervisor to utilize the housing. When the Agent called to verify the Claimant's story, he was told no such permission had been given. He subsequently asked the Claimant to vacate the premises. The Employee cooperated completely.

Following the incident, the Carrier charged the Claimant with violating Rule 607 of the Rules of the Maintenance of Way and Structures. The portion of the rule cited reads:

Rule 607: CONDUCT: Employees must not be:

(4) Dishonest;

Any act of . . . misconduct or willful disregard or negligence affecting the interest of the Company is sufficient cause for dismissal and must be reported.

During his testimony, the Claimant maintained he believed he was allowed to stay in the modular units by simply paying a clean up fee since he had done so while serving as a per diem

employee on other assignments. While the Claimant may be correct as far as the use of Company housing in other areas, we do not believe he actually thought he could use the modular units in this case. The Board would find his story much more convincing if October 27, 1987, had been the employee's first night at this particular location. Instead, according to his own testimony, the Claimant had been in the area for a period of time and had previously stayed at a motel. If there had been no doubt he was permitted to stay in the modular units as a per diem employee, why wouldn't he have stayed there earlier during his assignment. Certainly a \$2.50 cleaning fee was far less expensive than a \$17.00 per night motel room. It is simply not credible the employee would have spent money on motels if he really believed he had the right to use the units.

The Board does not believe the Claimant had any malice in his actions. We do not believe he thought he was actually violating a rule on honesty, but we do believe he recognized the restrictions placed on the use of the modular units. His cooperation is also worth noting, however, the Board does not believe the issuance of forty-five (45) demerits was excessive.

The Carrier is directed in this instance to review the charge as noted on the employee's personal record. As far as the charges brought against the Claimant, there is no evidence he was "Absent Without Authority". We believe his record should be corrected and the charges clarified.

AWARD

The claim is denied.



Carol J. Zamperini, Neutral

Submitted:

June 6, 1988

Denver, Colorado