

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - L. C. Yahnert
Award No. 69
Case No. 69

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 sixty (60) 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 sixty (60) 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.

On Tuesday, December 8, 1987, the Claimant was working as a Welder's Helper. At one point, he was directed by the Welder to retrieve a Nolan Push Car, which was located over one-half mile

down the track. At the time, there was a crew working on the eastbound track. In order to get around them, the Claimant decided to load the push car onto the westbound track, even though it was open to traffic. As the Claimant was pushing the car, he looked up and noticed a train approaching towards him. He was on a bridge and attempted to push the car accross the bridge and then tipped it off of the track. In the process, the Claimant injured himself. He subsequently filed a 2611.

As a result of this incident, the Carrier charged the Claimant with violating Rules A, K, 951, and 607, of the General Rules and Regulations for the Government of the Maintenance of Way and Structures and Engineering Department Employees. Those sections which 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 K: Employees must expect the movement of trains, engines, cars or other movable equipment at any time, on any track, in either direction.

Employees must not stand on the track in front of an approaching engine, car or other moving equipment. . . .

Rule 951: Placement or movement on tracks: Track cars may be placed upon the track and operated with following types of protection:

- (1) Track car line up (Rule 952)
- (2) Rule 252 (Track Permit)
- (3) Rule 265-269 (Direct Traffic Control)
- (4) Rule 351-(B) (Track and Time)
- (5) Rule 412 - (Track Warrant Control)
- (6) Rule 455 - (Track Bulletin)
- (7) Form "X" and "4" Train Orders
- (8) Flag Protection per Rule 99

Track cars will be operated as prescribed by Rule 351B on track where CTC is in effect.

When practicable, track cars will be moved with the current of traffic has been established.

Rule 951: If a line-up or protection under the above rules cannot be obtained, motor cars only may be operated if absolutely necessary in cases of emergency. When two or more employes are with a motor car, they must flag curves and other places where view is obstructed. When there is only one, he must proceed with caution, stopping frequently until he reaches a point where the view is unobstructed. All other types of track cars must be protected by at least one of the above listed rules.

Rule 607: Conduct. Employes must not be:

- (1) Careless of the safety of themselves or others
- (2) Negligent
- (3)
- (4) Dishonest.


While the Board believes the communication between the Welder and the Claimant was inadequate, we do not believe the Claimant was in any way intimidated by the Welder. Although his tenure with the Carrier is short, he has accrued enough seniority to recognize the dangers associated with working on a "hot" track. It was his responsibility to be aware of the number of trains approaching on the westbound track and to know what time they were due. If there was no line up available, he should have asked the Welder or the crew working on the eastbound track to radio for a schedule. It is obvious the Welder had the capability since the Claimant testified that he had a hand pack radio. His failure to ascertain when trains would be approaching, may well have caused him serious injury.

He also showed very poor judgement in not removing the push car from the track the minute he saw the approaching train.

This Board has continually directed the use of progressive discipline in those cases which warrant it. In this case, the Carrier assessed sixty (60) demerits. This penalty complies with the use of progressive discipline and hopefully will have a positive impact on the Claimant. We do not find the penalty to be unreasonable.

AWARD

The claim is denied.


Carol J. Zamperini, Neutral

Submitted:

June 7, 1988
Denver, Colorado