

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - E. J. Howe
Award No. 74
Case No. 74

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 three (3) 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 prove and support the charges by introduction of substantial bona fide evidence, that Carrier now be required to compensate Claimant for any and all loss of earnings suffered, and that the charges be removed from his record.

FINDINGS

Upon reviewing the record, as submitted, the Board finds that the Parties herein are Carrier and Employee 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 served as a Foreman for the Southern Pacific Transportation Company on Extra Gang 76. On April 7, 1988, the Claimant was in charge of a crew which was changing out a 17

foot, three inch piece of 136 pound closure rail at Klamath Falls yard. While he was actually participating in the work, one of the crew, in the process of performing a four-men lift, did not comply with proper body mechanics and suffered a pulled rib. Because the Claimant was the Foreman responsible for the crew, he was issued a charge letter and advised to appear at a formal investigation which was eventually held on May 6, 1988.

By letter dated May 19, 1988, the Claimant was advised the Carrier considered the evidence from the formal hearing sufficient to determine he had violated Rules A, I, 607, and 1051 of the Rules of the Maintenance of Way and Structures. Particularly those portions reading:

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 607: CONDUCT: Employees must not be:

(1) Careless of the safety of themselves or others. . . .

(2) Negligent;

Indifference to duty, or to the performance of duty, will not be condoned.

Rule 1051: RESPONSIBILITY: They have charge of and are responsible for the safety of their men and for the safe. . . . maintenance of track. . . . assigned to them.

Admittedly, the job of Foreman often lacks the distinction

it may deserve, nevertheless, there is a responsibility which is inherent in the job. A foreman has the responsibility of directing his crew. As such, he must be aware of the need for safety and must use his authority to avoid injury to those in his charge. In the case before us, the Claimant did not position himself in a way which would have allowed him to observe what was happening during the lift. As a result, one of his men attempted to help lift the rail while out of position. Even though the injured man was experienced and certainly shares the blame, the Foreman is not faultless.

A foreman is not excused from his obligations simply because a crew working with him is experienced. His responsibilities remain the same. The Claimant not only failed to observe what was happening, but he was negligent when he failed to set up a lift signal.

While we cannot argue that a reenactment is not the most accurate way of determining what actually happened, in this case it did provide sufficient information. Certainly if the reenactment was in any way faulty, the crew could have expressed their doubts at the time. Even the Claimant did not seem to feel a need to dispute the recounting of the incident. Therefore one has to assume the information provided was accurate.

Finally, the Claimant testified it was necessary for him to help the crew and in so doing he was not in a position to observe every crew member. The Board does not believe that is a sufficient defense. The pertinent questions are whether the

Foreman properly positioned himself to observe how the men were preparing to lift the rail, and, whether he arranged a lift signal, as he should have done.

The Claimant was afforded a fair hearing. The penalty issued was not excessive under the circumstances.

AWARD

The claim is denied.


Carol J. Zamperini, Neutral

Submitted:
September 7, 1988
Denver, Colorado