

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - A. G. Rodriguez
Award No. 75
Case No. 75

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 ten (10) 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 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.

The Claimant served as a Foreman for the Southern Pacific Transportation Company on Extra Gang 6. On April 11, 1988, the Claimant was in charge of a crew replacing a section of rail.

Instead of using mechanical means to turn around a trailer containing rail, it was decided to attempt to turn around the trailer by hand. In the process the track was fouled, but the Claimant had not secured track time. In an effort to avert any problems, the crew proceeded as quickly as possible. In the process of moving the rail, the trailer stand apparently collapsed and the rail fell on the ankle of the Claimant. The result was a three month disability.

An investigation into the incident was held on May 3, 1988. By letter dated May 12, 1988, the Carrier advised the Claimant he was guilty of violating Rules A, I, 1051, 607, 351(B), 5028, and 5071 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 1051: RESPONSIBILITY: They have charge of and are responsible for the safety of their men. . . .

Rule 607: CONDUCT: Employees must not be:

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

(2) Negligent;

Rule 351(B) PROTECTING MACHINES, TRACK CARS OR EMPLOYEES: Track and time limits may be granted for machines, track cars or employees in the same manner as to trains.

Rule 5028: Hands, feet and all other parts

of the body must be kept in a position where they cannot be struck, caught under or between materials, tools, or equipment.

Rule 5071: When working on or near tracks, employe in charge of work must. . . furnish protection required by the rules.

In retrospect, it does appear that the Claimant made several mistakes in judgement simply because he put himself in a position where he had to expedite his work. While it may have taken somewhat longer with a driver who may not have been as experienced as his regular driver, it still would have been advisable for the crew to have turned the trailer around by using the truck. In addition, the Foreman, recognizing he was in unfamiliar territory with a new driver, should have requested track time or an extension of his original track time long before the track was fouled. Once it was, however, he should have tried to ascertain exactly how much time he had. It is probable the attempt to do a rush job contributed to the accident.

However, the Board does believe there are mitigating factors in reviewing the penalty issued in this case. First, it appears someone other than the Claimant was responsible for releasing the track time they originally had. Secondly, the Foreman was left with a truck driver about whom he knew very little. The Board believes this left the Claimant handicapped as far as predicting the outcome of the crews efforts. While normally you would expect a foreman to properly appraise his crews' abilities, this cannot be expected when a crew member is present for the first time. Finally, it has always been the

practice of this Board to review a Claimant's work record and tenure. We have urged the use of progressive discipline where we believe the record of the employe warrants such consideration. In this case we believe it does. The Claimant had nearly twenty-four (24) years of service with the Carrier. While his record was not perfect, he had only been issued sixty (60) demerits in 1980. All other disciplinary actions were in the forms of admonishments. We can assume these infractions were minor. Therefore, for a first suspension, ten (10) days is excessive.

The Claimant was afforded a full and fair hearing.

AWARD

The claim is sustained in part; the ten (10) day suspension is to be reduced to a three (3) day suspension. The Claimant is to be reimbursed all wages and benefits lost in excess of this amount.



Carol J. Zamperini, Neutral

Submitted;
September 8, 1988
Denver, Colorado