

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - D. D. Ellington
Award No. 77
Case No. 77

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 ten (10) working 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, a crane operator, was assigned to unload rail near Little Mountain, Utah on March 24, 1988. While moving his crane backwards into position, he simultaneously raised the boom

of the crane and hit electrical wiring. As a result of this accident, he was charged with the possible violation of portions of Rules K, 607, and 622 of the Rules and Regulations Governing Maintenance of Way Employees and Rule 3 of the Rules and Regulations for the Safe Operation and Care of Work Equipment.

The rules cited read:

Rule K, Paragraph 3:

Employees must inform themselves as to the location of structures or obstructions where clearances are close.

Rule 607:

Conduct: Employees must not be careless of the safety of themselves or others. . . .

Rule 622:

Safety Rules: Employees must have a copy, be conversant with and comply with safety rules issued in separate book or other form.

Rule 3:

Equipment shall not be operated in a manner to endanger life, limb or property.

A) Warning signs reading, "Unlawful to operate this equipment within 10 feet of high voltage lines of 50,000 volts or less" shall be posted and maintained in plain view of the operator and a driver. Also, warning sign reading, "Unlawful to operate this equipment within 10 feet of high voltage lines of 50,000 volts or less shall be located on each side of the boom on all automotive, track work, and shop equipment which is equipped with boom type work devices, regardless of assignment.

Following the investigation the Claimant received a letter dated April 29, 1988, advising him he was suspended for a period of ten (10) working days for violating the above mentioned

rules.

The Board believes the Claimant's actions in this case are simply inexcusable. He failed to perform the relatively simple task of making sure there was clearance before he moved his equipment into position. His failure in this respect cannot be excused by the absence of a "helper". The wires were not something which appeared suddenly, but, existed before he ever began his task and could have been spotted by inspecting the location. Nor is the Claimant any less culpable because he was unfamiliar with the area. For this reason alone, he should have been more thorough in his observations before starting his work.

The Claimant has a fairly good employment record and a lengthy tenure. However, the seriousness of the accident, which could have resulted in fatalities, along with the fact the accident could very easily have been prevented by the normal execution of his job, justifies the penalty issued in this case.

The Claimant was afforded a complete and fair hearing.

AWARD

The claim is denied.


Carol J. Zamperini, Neutral

Submitted:

September 30, 1988
Denver, Colorado