

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - A. A. Gonzalez
Award No. 78
Case No. 78

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 thirty (30) 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, 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 was notified by letter dated August 10, 1988, that the evidence presented at a formal investigation held on July 7, 1988 was sufficient to support charges he had violated

Rules A, I, 607 and 5028 of The Rules and Regulations of the Maintenance of Way and Structures. The portions of the rules cited included:

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. . . . 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. . . .

Rule 5028: Hands, feet and all other parts of the body must be kept in a position where they cannot be struck by, caught under or between materials, tools or equipment.

The Claimant was suspended for a period of thirty (30) days.

This is the second time this Board has been called upon to review almost identical charges against the Claimant. The first incident involved a personal injury which he suffered in January, 1988. As a result of the accident, the Carrier suspended the Claimant for a period of two (2) days. In that case, the Board believed the Claimant had been given some erroneous information by his foreman on how to lift a piece of malfunctioning equipment. As a result of the direction he had received and his lengthy tenure, the suspension was reduced to sixty (60) demerits.

In the present case, the Claimant was working with another

employee changing some rail panels at an intersection. A crane was being used to lift the panels. At one point, the Claimant's co-worker, S. W. Lucker, signaled to the crane operator that it was all right to begin the lift. For whatever reason, the Claimant was still holding one of the cables at a point where his hand would be caught in between the cable and the four-part block as the panel was being lifted. According to the co-worker, he had asked the Claimant if he was ready for the lift and the Claimant responded in the affirmative. The Claimant denies ever giving clearance for the lift. He said the two were trying to untangle some cables and were not prepared for movement, but instead were trying to determine who was going to give the lift signal. At any rate, the lift commenced and the Claimant injured his hand, breaking his little finger.

Although the Board finds fault with Lucker's failure to be sure the Claimant was clear before giving the lift signal, we believe the Claimant shares a major part of the blame for the accident. He was not paying attention to what was happening. This is substantiated by the testimony presented at the investigation. Witnesses indicated the Claimant was talking at the time and failed to notice the block being lifted. Certainly if others, who were twenty (20) feet away, noticed the movement of the cable, the Claimant should also have been cognizant of what was happening. The Board believes the inattentiveness of the Claimant resulted in his failure to remove his hand from the cable. If the Claimant had been talking to Lucker, before and during the lift, as he claims, he would have seen Lucker give


the signal and would have realized the lift was about to begin.

In the past, this Board has praised the employment record of the Claimant. He has given twenty-four (24) years of service and has been a fine employee during those years. That was a major factor in this Board reducing a two (2) day suspension to sixty (60) demerits a month before this incident. While it still appears to be true the Claimant has not lost any time as a result of his personal injuries, this Board is concerned about the apparent lack of attention the Claimant gave to his duties in the instant case. This resulted in an injury.

As this Board has said on many occasions, the object of progressive discipline is to issue the least amount of penalty necessary to bring about a modification of behavior. It seems clear, the Claimant was not overly impressed by the sixty (60) demerits resulting from the earlier Board decision. Instead of becoming more cautious, he appears to have become less cautious. When an employee fails to respond positively to a lesser penalty, it is sometimes necessary, for his own good, to issue a penalty to "get his attention" and force him to modify his behavior. While the Claimant does have a very good record, this latest incident justifiably gives the Carrier cause for concern. The Board believes the penalty issued in this case is justifiable.

AWARD

The claim is denied.


Carol J. Zamperini, Neutral

Submitted:

October 20, 1988
Denver, Colorado