SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - R. R. Valadez
Award No. 79
Case No. 79

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 sixty (60) 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 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.

At the time of the incident, Mr. R. R. Valadez was on a disability leave which allegedly resulted from an injury. Apparently as a result of the accident, he filed a law suit

against the Carrier.

On February 18, 1988, Mr. McDowell, Assistant Superintendent, Los Angeles, telephoned the Claimant, and through an interpreter, requested he attend a conference at 2:00 p.m. the following day, February 19, 1988, at Oxnard, California. The Claimant, through the interpreter, indicated he would not attend the conference and any communication from the Company would have to be through his attorney. The Assistant Superintendent told the Claimant the conference had nothing to do with the pending law suit, but merely was going to be an attempt to determine what the Claimant's medical status was and what his future was with the Company. The Claimant was adamant in his refusal to attend.

The next day, the Assistant Superintendent and clerk, Elba Guerrero traveled to Oxnard to meet with Laborer Valadez, who never arrived.

The Claimant was advised by letter dated March 8, 1988, to appear at the office of the Trainmaster, in Oxnard, California on March 18, 1988 for a formal hearing. The purpose of said hearing was to determine whether the Claimant had violated the following rule of the Rules and Regulations for the Government of the Maintenance of Way and Structures and Engineering Department Employes:

Rule 607. CONDUCT: Employes must not be:

"(3) Insubordinate;". . . .

Subsequent to the hearing, the Carrier notified the Claimant that the evidence adduced from the hearing was sufficient to find him guilty of the charges. He was suspended for sixty (60) days.

For most of us, getting involved in legal matters presents an uncomfortable situation. Once an attorney is involved, the most secure thing is to allow that person to handle the entire matter for fear you will do something which jeopardizes your position. The Board believes that probably happened in this case. The Claimant was obviously reticent to discuss his disability with the Carrier's Supervisor because he felt it would put him at a disadvantage. In order to be safe he directed all information be provided through his attorney. While this may not have been necessary, the Claimant felt disadvantaged doing it any other way.

Certainly Mr. Valadez would have been better advised to attend the meeting to at least determine what it was the Company wanted. Once there, he could have discussed the matter and answered those questions which he did not feel were prejudicial. On the other hand, when you are not an attorney, it is not an easy matter to distinguish between answers which are harmless and others which are not. It is understandably much more comforting to communicate through someone who presumably is more knowledgeable about the legal ramifications. If the Company felt it necessary to speak to the Claimant through an interpreter, They should have been sensitive to his reluctance to talk about his injury without the presence of his legal

counsel. There were alternatives to asking the Claimant to attend a meeting "cold", so to speak. An easy solution would have been to submit a list of written questions to the Claimant so that he could have shared them with his attorney prior to the meeting.

Insubordination is a serious matter. Mr. Valadez I am sure is aware of this. Normally, this Board looks very carefully before disturbing a disciplinary action issued because of insubordination. However, the circumstances of this case, along with the Claimant's 32 years of service to the Company are mitigating factors. There is nothing in the Employe's Employment Record to indicate he has been anything but a reliable and conscientious employe. This is the only disciplinary action on his record. And, while he has been injured several times over the years, this is apparently the only time he has lost days because of it.

The sixty (60) day suspension was excessive under the circumstances.

AWARD

The sixty (60) day suspension is to be reduced to a fifteen (15) day suspension.

947-79

Carol J. Zamperini, Neutral

Submitted:

January 27, 1989
Denver, Colorado