SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - D. B. Novella
Award No. 81
Case No. 81

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 fifteen (15) 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.

On June 6, 1988, a Monday, the Claimant, Mr. Novella, an Assistant Foreman of Track, approached his Supervisor, Track Foreman Mr. Espinosa. During their conversation, he advised the

Foreman he thought he had injured his knee on June 2, 1988. The Foreman then called the Roadmaster, who in turn traveled to the site to speak with the Claimant. Mr. Novella advised him he was working at a crossing on Friday, June 3, 1988 and bent down to eyeball a joint. At the time, he noticed pain in his knee, but continued working. He said in reality the knee actually began hurting on Wednesday of the preceeding week, but he hurt it on Friday. Following their conversation, the two men called the Division Engineer, Mr. Walker. The Claimant once again explained his situation; he was hurt on Wednesday while flagging, but did not notice it until Friday when he bent down to pick something up. Mr. Walker proceeded to ask the Claimant if he realized his report was late and therefore would probably be rejected as an on-the-job injury.

The Claimant worked the rest of the day and the following day, but did not report on June 7 and 8. When he returned to work on June 9, he was told a doctor's release would be required. He obtained the release, which stated that the Claimant was being treated for acute pain in his left knee which had caused his absence from work the previous two days. In addition, the note released Mr. Novella for regular assignment. The employee worked that day, but subsequently reported off due to the knee injury.

During this time, the Claimant did not file a 2611 until July 18, 1988. He contended it was because the Division Engineer would not accept it. The Division Engineer denied ever refusing the 2611, but did testify that because the Claimant

claimed an on-the-job injury after the fact, he would not accept the injury as an industrial injury. On August 1, 1988, the Carrier sent a charge letter to the Claimant advising him to attend an investigation on August 15, 1988 to determine whether he had violated Rules 607 and 806 of the Rules and Regulations of the Maintenance of Way and Structures. Particularly those sections reading:

> Rule 607: CONDUCT: Employees must not be:
>
> (4) Dishonest;
>
> Rule 806: REPORTING: All cases of personal injury, while on duty, or on Company propoerty must be promptly reported to proper officer on prescribed form.

Following the investigation, the Claimant was suspended for fifteen (15) days because the Carrier believed the evidence from the hearing was sufficient to prove he had violated Rule 806.

The Claimant is an Assistant Track Foreman, he was aware of his responsibilities relative to reporting injuries which occur on the job. In this case, he should have at least mentioned his possible injury to someone on either June 1, 1988 or on Friday, June 3. His failure to do so has created a credibility problem. His credibility is further tainted by the fact he went to work on the following Monday and managed to work the entire day and the following day. If his knee had gotten progressively worse over the weekend, one would suspect he would not have been able to work those two days. Regardless, the Claimant knew a 2611 was required for an on-the-job injury and should have either

submitted one on Friday or reported the accident to someone of authority. This is especially true in light of the fact, the Claimant has been injured on three other occasions and would have been familiar with the process.

The Claimant has been disciplined at least three other times for other rule violations. In addition, he has suffered three other job related injuries since 1980.

The Board believes in reviewing this matter certain facts are obvious. While the 2611's may not have been available on Friday, nothing prevented the Claimant from calling someone to request the form. Secondly, it is unlikely he was ever told the form would not be accepted, particularly in light of the fact, the rest of the gang completed forms on Monday or Tuesday, June 6 or 7. These were submitted by the Foreman on Wednesday, June 8, 1988. If he had been told the form would not be accepted, there was nothing to prevent him from calling his Union. There can be no doubt the Claimant was late in submitting the necessary forms.

There were inconsistencies in the Claimant's story which leave doubts as to his veracity relative to when he became injured. Because of this, his delay insubmitting his 2611, and his record of employment, the Board does not believe the penalty was unreasonable.

AWARD

The Claim is denied.

947-81

Carol J. Zamperini, Neutral

Submitted:

February 17, 1989
Denver, Colorado