

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - J. T. Berg
Award No. 84
Case No. 84

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 assess Claimant thirty (30) demerits 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.

The Claimant first went to work for the Carrier May 23, 1984. From then until July 29, 1988, the date of the alleged rule violation, he was furloughed and recalled several times because of lack of work. When not employed for the Company, he

worked on the rodeo circuit. When he was due to be recalled in July, 1988, a certified letter was sent to him requesting he keep a doctor's appointment for a physical. There is no evidence he ever received that letter. He did not keep the appointment. Another letter was sent on August 15, 1988 and received by the Claimant on August 17, 1988. The letter requested he contact Ms. Diana Lybarger to make arrangements for a physical examination. He was told at the time, failure to comply could result in discipline. A September 8, 1988 appointment was made for the Claimant, but once again he failed to attend. When he finally attended an appointment set up on October 17, 1988, he would not take the physical because he believed it should have involved only an examination of his wrist, which he had injured prior to his last furlough. When he called and told Ms. Lybarger's replacement of his actions, he was told disciplinary actions may be instituted and it was out of her hands. On October 25, 1988, the Claimant was sent a charge letter advising him to attend a formal hearing to determine whether or not he had violated Rule 607 of the Rules and Regulations of the Maintenance of Way and Structures. The rule reads in part:

Rule 607: CONDUCT: Employees must not be:

(3) Insubordinate;

Any act of hostility, misconduct or willful disregard or negligence affecting (sic) the interests of the Company is sufficient cause for dismissal and must be reported.

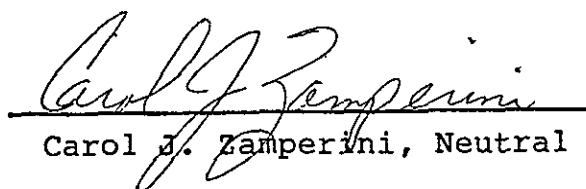
The Carrier believed the evidence was sufficient to find the Claimant guilty of the charges. They issued him thirty (30) demerits.

The Board believes the Claimant had ample opportunity to comply with the request of the Carrier. He was at fault in not communicating to the Carrier that he would not keep the September 8, 1988 doctor's appointment. And, as far as the October 17 appointment, it was not up to him to determine the nature of the physical being requested by the Company. If he had any questions, he should have called the office prior to refusing to submit to an examination the third time. Besides the rule in this type of case, is that the Claimant must comply with a reasonable request and file a claim later if s/he believes his/her rights have been violated. The request by the Company was reasonable. Though there may not have been malice involved, the Claimant none-the-less was guilty of not complying to the Carrier's direction.

The penalty of thirty (30) demerits was reasonable.

AWARD

The Claim is denied.


Carol J. Zamperini, Neutral

Submitted:

February 16, 1989
Denver, Colorado