

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - R. Ramirez
Award No. 88
Case No. 88

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 fourteen (14) 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.

On April 4, 1989, the Claimant was operating tamper SPO 266 at Tulare. He, along with other crew members were putting their machines into a spur track at or near MP 250.4. The Claimant

was the first of the crew to enter the spur. Once inside the spur, he applied the brakes and his machine failed to stop. Instead the machine slid anywhere from 75 to 120 feet before hitting a compactor which was parked in the spur. After the accident was investigated, the Claimant was sent a charge letter advising him to appear for a formal investigation to determine whether he had violated the following rules for the Maintenance of Way and Structures, Southern Pacific Transportation Company:

Rule 607, CONDUCT, 1st Paragraph,: Employees must not be:
(2) Negligent;

Rule 1041, RESPONSIBILITY, 1st Paragraph:
They will be held responsible for the safety, care, maintenance and performance of the machines to which they are assigned. . .

Rule 963, TRACK CAR SPEED, 3rd Paragraph: .
. . .Track cars must be operated so that they can stop within one half their range of vision.

Following a review of the evidence presented at the hearing the Carrier determined the Claimant guilty of the charges and suspended him for fourteen (14) days.

There are occasions when despite our best efforts we find ourselves involved in an accident because we are unable to predict what will occur until we have experienced the situation. In this case, it is obvious the Claimant went into the spur at a speed which would not permit him to stop short of the compactor. This probably was the result of grease and oil present on the surface of the track. And we know this because hindsight is twenty/twenty.

What we don't know is how fast the Claimant was going when he approached the spur, how fast he should have been going in order to stop on the grease and oil, or whether the Claimant should have known that he was traveling at an excessive speed when he entered the track spur. We do not actually know how far the tamper slid since there were no measurements taken by the supervisors who investigated the accident and no accident reenactment.

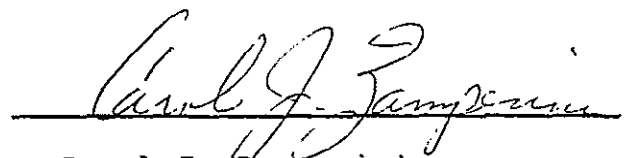
Is it enough therefore to find the Claimant negligent on the basis that he skidded into a compactor. On the one hand it would appear to be, since the other crew members managed to stop once inside the spur. On the other hand, the Claimant was the first one in the spur and despite their testimony to the contrary, it is hard to believe the crew members following the Claimant into the track did not notice he was having difficulty stopping. Regardless, it would seem to this Board the Claimant was found guilty merely because he had the accident. There was no attempt to prove the Claimant was guilty by calculating the length of the skid marks, his probable speed upon entering the spur and the speed at which he should have entered the spur. While one may well believe someone is negligent anytime they have an accident, believing it and proving it are two different things. But, when someone is charged with a rule violation, a determination of guilt must be supported by evidence which is more concrete than a presumption of negligence by the fact an accident occurred. In this case, the supervisors in charge had an obligation to do more investigating than looking at the scene

of the accident and calculating the amount of damages. The Board should have been provided with evidence showing approximately how fast the Claimant was going. Evidence should have been provided to show, not only that the Claimant was going too fast to stop, but that he should have known he was going too fast to stop for the particular track conditions which existed. It is the Carrier's burden to prove to the Board the actions taken against the Employee were based on sufficient evidence obtained from a proper investigation of the accident. The Board does not believe the Carrier has met their burden.

The Board has also reviewed the Claimant's employment record. Other than an accident he had four years ago, for which he was issued 25 demerits, we find nothing which indicates the Claimant has been other than a good employee.

AWARD

The Carrier has failed to prove the charges against the Claimant. The fourteen (14) day suspension is to be rescinded. The Claimant is to be reimbursed all wages and benefits lost as a result of this suspension.


Carol J. Zamperini
Neutral

Submitted:

November 29, 1989
Denver, Colorado