

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - A. Santa Cruz
Award No. 96
Case No. 96

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 dismiss Claimant, A. Santa Cruz from its service 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 reinstate and 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 advised by letter dated February 12, 1988 that he was being removed from service and told to be present for a formal investigation to be held at the office of the

Assistant Division Engineer at Roseville, California at 9:30 a.m., Friday, February 26, 1988. The purpose of the hearing was to determine whether the Claimant was under the influence of drugs on February 11, 1988. The Claimant was charged with an alleged violation of Rule G of the General Rules and Regulations for the Government of Maintenance of Way and Engineering Department Employees of the Southern Pacific Transportation Company, which reads:

Rule G: The use of alcoholic beverages or intoxicants by employees subject to duty, or their possession, use or being under the influence thereof while on duty or on company property, is prohibited.

Employees shall not report for duty under the influence of, or use while on duty or on company property any drug, medication or other substance, including those prescribed by a doctor, that will in any way adversely affect their alertness, coordination, reaction, response or safety. Questionable cases involving prescribed medication shall be referred to a company Medical Officer.

The illegal use, possession or sale while on or off duty of a drug, narcotic, or other substance which affects alertness, coordination, reaction, or safety is prohibited.

Because the Claimant failed to protect a welder on February 10, 1988, the Roadmaster R. C. Chavez, summoned him to a meeting on February 11, 1988. During the conference, the Claimant's responses were slow and his eyes were dilated. Aside from this, the Claimant's work attendance had been irregular in the immediate past. Therefore, the Roadmaster requested the Claimant take a toxicological examination. The results of the examination revealed the presence of derivatives of marijuana

and cocaine. The Claimant was removed from service pending a hearing.

Unfortunately for the Claimant, the test results were sufficient to indicate the Claimant had used both marijuana and cocaine at some time prior to the meeting with the Roadmaster. Those tests, coupled with the observations of the Roadmaster are sufficient to show the Claimant violated Rule G.

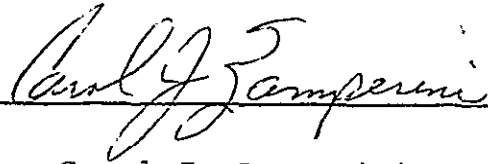
In view of the Claimant's record, this Board finds no mitigating factors to offset the penalty issued by the Carrier. They were within their right to remove the Claimant pending an investigation since the test results were positive. Admittedly, the Carrier had dismissed the Claimant on another charge prior to the issuance of the discharge letter in this case, which could raise some procedural issues. However, the events which precipitated the two cases were at least indirectly related and occurred almost simultaneously. The hearing in this matter had been scheduled prior to the Claimant's February 25, 1988 discharge and involved an incident which happened while the Claimant was still employed.

The Claimant was afforded a full and fair hearing. He was guilty of violating the cited rule.

AWARD

The claim is denied.

947-96

A handwritten signature in cursive script, reading "Carol J. Zamperini", written over a horizontal line.

Carol J. Zamperini
Neutral

Submitted:

January 24, 1990
Denver, Colorado