

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - A. V. Reyes
Award No. 98
Case No. 98

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, A. V. Reyes forty-five (45) 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 remove the demerits assessed and clear his personal record of the charges placed thereon.

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.

Claimant, A. V. Reyes, was notified by letter dated September 6, 1989 to appear for a hearing to determine whether he had violated Rules E, 607 and 806 of the Rules and

Regulations for the Maintenance of Way and Structures of the Southern Pacific Transportation company. The charges resulted from his alleged failure to report an injury in a timely manner. The injury occurred while the Claimant was working as a Ballast Operator on Surfacing Gang S-11. The portion of these rules allegedly violated include:

Rule E: Accidents, personal injuries
 .must be reported by the first means of communication. Written report must follow promptly when required. . . .

Rule 607: CONDUCT: Employees must not be:

(4) dishonest;

Rule 806: REPORTING:

All cases of personal injury, while on duty, or on company property must be promptly reported to proper officer on prescribed form.

From the evidence presented at the hearing, the Carrier determined the Claimant had been late in reporting his injury in violation of Rules E and 806. His record was assessed 45 demerits.

According to the Claimant's testimony, he was putting gravel in between the tracks on August 15, 1989, when he noticed a piece of angle bar in the ballast. He got off the machine, picked up the bar and threw it away from the track. He said at that time, he felt a pain like air rushing through his back, but thought it was a temporary thing and would go away. He subsequently told his foreman he wanted to be sure to get off work on time because his back was hurting and he wanted to get to his doctor. However, he did not tell his foreman he had hurt

his back while on duty.


The next day, he went to a chiropractor, who, after taking x-rays, told the Claimant he had a pinched nerve probably resulting from something he had done at work. The day after that, the Claimant reported the injury as an on-the-job injury.

It is not unusual for injuries to occur, but go relatively unnoticed. For one thing, there are many instances where one feels an immediate pain without suffering a lasting injury. In other instances, an injury occurs, but does not become painful until sometime later when inflammation sets in or the muscles become tight. For these reasons, the Board finds the Claimant's testimony to be credible and if this were the first time he had experienced such a dilemma, we would probably be quick to point out these facts and dismiss any discipline issued to the Claimant. Here, however, we have an employe who has been issued demerits in the past for not reporting his injury in a timely manner. He must keep in mind the importance of reporting any possible injuries before he leaves work for the day. Otherwise, the Carrier loses its protection by being uncertain whether or not the claimed injury occurred on the property or while the employe was on his own time. The demerits issued in this case are not so severe as to put the employe, who is obviously a good employe, in any serious jeopardy. Therefore, under all circumstances, the forty-five demerits is reasonable.

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AWARD

The claim is denied.

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

Carol J. Zamperini
Neutral

Submitted:

January 25, 1990
Denver, Colorado