

SPECIAL BOARD OF ADJUSTMENT NO. 993

PARTIES  
TO  
DISPUTE:

UNITED TRANSPORTATION UNION (S&T)  
(WESTERN LINES)

and

UNION PACIFIC RAILROAD COMPANY  
(Formerly Southern Pacific Transportation Company)

Claimant: R. L. HURD  
National Mediation Board Case No . 366  
Award No. 366  
National Mediation Board Code: 106

INTRODUCTION

This case is an appeal by an employee who injured himself while on the job, suffering a torn calf muscle. As a consequence of this injury, the Carrier conducted a formal investigation and thereafter imposed discipline, upon a finding that the employee had failed to observe rules relating to employee safety.

STATEMENT OF CLAIM

“We present on appeal, the request of Brakeman R. L. Hurd (SSA #554-40-0073), Roseville Division, for replacement of wage loss and

productivity credits resulting from his suspension from service for 3 days, March 18, 1966 through March 20, 1966; as well as wage loss and productivity credits resulting from his attending an investigation on February 20, 1996.

In addition, we request that this incident be expunged from Mr. Hurd's personal record. Mr. Hurd was charged with an alleged violation of Rules 1.1 and 1.1.2 of Southern Pacific Lines' Safety and General Rules For All Employees, which occurred on January 12, 1996."

#### STATEMENT OF FACTS

On January 24, 1996, the Claimant was sent the following notice of investigation:

"You are hereby notified to be present at the office of the Trainmaster, 5424 S.E. McLoughlin Blvd., Portland, Oregon, at 10:00 a.m., Tuesday, January 30, 1996, for formal investigation to develop the facts and place responsibility, if any, in connection with your alleged personal injury while working as brakeman on the Kraft Switcher, on duty Salem at 8:00 a.m., January 12, 1996.

You are hereby charged with responsibility which may involve violation of the following rules of the Southern Pacific Lines Safety And General Rules For All Employees, reading:

##### "1.1 Safety

Safety is the most important element in performing duties. Obeying the rules is essential to job safety and continued employment.

It is the responsibility of every employee to exercise care

to avoid injury to themselves or others. Working safely is a condition of employment with the Company. The Company will not permit any employee to take an unnecessary risk in the performance of duty.

No job is so important, no service so urgent, that we cannot take the time to perform all work safely."

"1.1.2 Alert and Attentive

Employees must be careful to prevent injuring themselves or others. They must be alert and attentive when performing their duties and plan their work to avoid injury."

"1.6 Conduct

Employees must not be:

1. Careless of the safety of themselves or others.."

You are entitled to representation and witnesses in accordance with your agreement provisions. Any request for postponement must be submitted in writing, including the reason, to the undersigned" [Emphasis in the original letter]

Thereafter, the formal investigation was postponed to February 20, 1996, on which date the formal investigation proceeded.

Subsequent to the investigation, the Carrier determined that the Claimant was responsible for his injury and had violated General Rule 1.1 and Operating Rule 1.1.2. The Carrier assessed the discipline now on appeal before the Board.

## ARGUMENTS OF THE PARTIES

### CARRIER'S POSITION

The Carrier's witness, the trainmaster who investigated this injury, testified at the formal investigation that the Claimant was walking down a lead in the Salem Yard and when he reached down to pull a pin on a car, he felt pain in his leg and came up lame. He further testified that the ground was level, flat and a good working area. The Claimant was wearing appropriate boots and clothing. He admitted that the Claimant was being charged solely because of his injury.

### THE ORGANIZATION

The Organization argued that there was no showing that the Claimant had violated any rules of the Carrier. Loose gravel on an uneven walkway was shown as a possible contributory factor.

The Claimant's representative, R.G. Pearson, Local Chairman, claimed that the charges stemmed specifically from a Carrier policy to cite all employees who sustain a personal injury, notwithstanding their culpability. He referred specifically, as applicable to this case, Special Adjustment Board 18, Decision #5277 (Paul Hanlon, Neutral Member) and Decision #5785 (Gilbert Vernon, Neutral Member).

The Organization also objected that the investigation conducted by the Carrier was not conducted in a fair and impartial manner. The Organization had requested that witnesses who were present at the time of the incident

be called, but the Carrier failed to do so. The Carrier only called the trainmaster, its investigating officer, who only came to the scene afterwards, to investigate the injury.

The trainmaster admitted that the charge letter was issued solely because the injury had occurred.

### FINDINGS

This Board, upon the whole record and all evidence, finds that the Parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement, that it has jurisdiction of the Parties and the subject matter, and that the Parties were given due notice of the hearing held.

### DECISION

The record contains no evidence supporting a finding of any violation of the Carrier's rules, other than the fact that the Claimant suffered an injury.

At the commencement of the investigation, the Organization cited Special Adjustment Board No. 18, Decision #5277 by Chairman Paul Hanlon. That decision, with facts similar to the present case is very much on point. Chairman Hanlon wrote:

"At the investigation the Carrier presented only the testimony of an assistant trainmaster who testified that he inspected the

general area where the incident occurred and found the footing to be solid.

The mere sustaining of an injury does not constitute proof of carelessness and it seems very clear that the Carrier has failed to carry its burden of proof in this case."

The Organization also cited Decision #5785 by Chairman Gilbert Vernon, also from Special Adjustment Board No. 18. In that case, Chairman Vernon wrote:

"After reviewing the transcripts, it is the conclusion of the Board that the evidence is wholly insufficient to conclude that the Claimant caused or contributed in any significant way to his injury. The mere fact an injury occurs does not in and of itself establish negligence."

In the instant case, as the only evidence advanced to support a finding of carelessness or breach of the Carrier's rules is the fact of the injury itself, and testimony of good footing, there is not sufficient evidence to establish the requisite proof of carelessness. The Carrier has failed to carry its burden of proof in this case.

#### AWARD

The claim is SUSTAINED.

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Martin Henner, Neutral Member

Submitted this 18th day of September, 1998, at Eugene, Oregon