

SPECIAL ADJUSTMENT BOARD NO. 947

Award No.1

Case No. 1

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Southern Pacific Transportation Company (Western
Lines)

STATEMENT
OF CLAIM

1. That the Carrier violated the Agreement when on February 25, 1983, it suspended Utility Tractor Backhoe Operator, Kenneth P. Gooch from service pending a formal hearing for alleged violation of Carrier Rule M240 and Rule M810 in part, and thereafter, advised Mr. Gooch by letter dated April 11, 1983, that he was in violation of said rules, and therefore, was suspended for a period of fifty (50) calendar days effective February 23, 1983, said action being excessive.
2. That Kenneth P. Gooch be compensated for all time lost from his position as a result of their improper suspension and tht the charges relative to this issue be expunged from his personnel 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 Grievant in this matter was a Utility Tractor Backhoe Operator who worked for the Northwestern Pacific Railroad out of

the Eureka, California Headquarters. By letter dated, March 9, 1983, he was advised to attend ". . . a formal hearing in conjunction with your alleged absenteeing yourself from your post of duty, MP279.0 to MP 280.0 without proper authority and using Company vehicle, Backhoe, SPO-462, for other than Company business on February 22, 1983, at approximately 10:40 A.M.." Subsequently, a corrected copy of this letter was forwarded and the date of the alleged violation was cited as February 25, 1983. The Carrier contended the Grievant had violated two of the Carrier's rules, Rule M240 and Rule M810 in part, of the General Rules and Regulations of the Maintenance of Way and Structures Department.

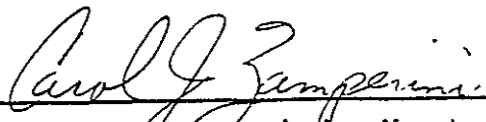
The record shows on February 25, 1983, at approximately 10:40 A.M., David Raymond Voris, District Maintenance of Way Manager, Eureka, California, and George Norman Scott, B&B Supervisor, observed Kenneth P. Gooch, the Grievant, driving a Company backhoe away from his assigned work area and then to his home. There Mr. Voris confronted Mr. Gooch and inquired as to his reason for leaving his work assignment during his work time and why he drove the Company backhoe off Company property. Mr. Gooch explained to Mr. Voris that he had come home to change his wet pants. Upon inspection, it was noted the pants were wet only around the cuffs. At 11:55 Mr. Voris removed the Grievant from service pending a formal hearing. The Grievant testified at the hearing that his shoes and socks were wet, as well as, his pants. He did not get permission either to leave his work

site or to drive the backhoe off Company property because he had no way of getting in to talk to Mr. Voris because of the distance to the depot. He, therefore, decided to go home to change his clothes during lunch time because it was closer to his work site and there would be less traffic. Since he did go home during his lunch break, the Grievant did not feel it was improper to leave his duty post. The Grievant further testified to his familiarity with Rule M240 and Rule M810.

The Grievant is an eighteen year employee. It is obvious from his length of service he is familiar with the Rules and Regulations which govern his work. In addition, he has been warned and discliplined previously for violations of numerous rules, including Rule M810. Even his testimony indicated he was familiar with Rule M240 and Rule M810. In view of his past record, the Grievant should have been aware of his tenuous position. On the day in question, he left his duty post early and drove Company equipment off Company property. Whether he intends it or not, his actions appear to challenge the authority of his Supervisors. Although, in a majority of cases, a fifty (50) day suspension may be excessive for an employee with as much service, I believe in this case, the record of the employee along with his actions warrants the penalty.

AWARD

Claim denied.



Carol J. Zamperini, Neutral

Submitted:

June 11, 1984
Denver, Colorado