

SPECIAL ADJUSTMENT BOARD NO. 947

Award No.10
Case No. 10

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

1. That the Carrier violated the provisions of the Agreement when, on June 27, 1983, they advised Mr. Luis F. Valdez, Foreman Crossing & Switch Gang C-5, that he was disqualified in Class 1, Track Foreman, for allegedly violating Rules M852, M202-C, M202-D, M811, and M802, of the Rules and Regulations of the Maintenance of Way and Structures, said action against Mr. Valdez was instituted after a formal hearing which was held at the office of Regional Engineer, Los Angeles, California, on March 31, 1983, this action being excessive and unjustified under the circumstances involved.
2. That Mr. Valdez be exonerated of all charges and be allowed to continue working undisciplined with his record cleared of any reference to this matter.

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 the arbitrator being sole signatory.

On February 28, 1983, there was a form "Y" train order in effect.

between Moorpark and Chatsworth (near Santa Susana) from 8:30 A.M. until 4:45 P.M. with Red Conditional stop signs to be placed at MP 432.8 for Eastward trains and at MP 437.7 for Westward trains. On that day, train SP #13 was delayed for twenty-one (21) minutes because the flags were not displayed in those vicinities. Around 11:08 A.M., Mr. Raymond Baker, District Maintenance of Way Manager was driving his Company truck and heard the Engineer of SP #13, Mr. Hewlett, trying to contact Foreman Valdez. He spoke with the engineer and was advised no red or yellow flags had been placed where expected. After the conversation, Mr. Baker proceeded to the area where the red flags should have been positioned. He arrived just in time to see the train pulling out of the area after receiving a green flag signal from Mr. Valdez. When Mr. Baker questioned Mr. Valdez about the missing red and yellow flags, the Foreman explained that both his Company truck and the truck used by the gang who were sent to set up the flags had broken down. That, coupled with an inoperable radio, created a situation which he was unaware of initially. It was also the explanation for the engineer's inability to contact him. When he realized the boom truck had broken down and the flags had not been set up, the Grievant drove his personal vehicle to the appropriate spot to give the engineer a green signal flag to indicate he could proceed.

In a letter dated March 23, 1983, Mr. Valdez was notified to be present at a formal hearing to investigate his alleged violation

of Rules M852, M202-C, M202-D subparts (e) and (h), M811, and M802 when he failed to position the red conditional stop flags and the yellow proceed prepared to stop flags on February 28, 1983. In a letter dated June 27, 1983, Mr. Valdez was advised by the Company, that the evidence adduced at that hearing established his responsibility in connection with the twenty-one (21) minute delay of SP #13 on February 28, 1983. As a result he was disqualified as a Class 1, Track Foreman.

The Employment Record of Mr. Valdez reveals he has been employed with the Company for over twelve (12) years. Between the time he was employed and the date of the incident described herein, he had a clean discipline record and only one instance that might be considered a rule violation. That was on 8-3-82 when he received a letter regarding Rule M532, which involves maintaining adequate daily records. Although, during his testimony, Mr. Baker responding to a question by Mr. Gonzalez, Division Chairman, BMWE, said Mr. Valdez had delayed trains in the past, the Company presented no evidence concerning any such delays. Nor was there any indication of warnings or "educational discussions" between Mr. Valdez and his Supervisors relative to any rule infractions regarding his handling of train traffic and/or right of way. Even though Mr. Valdez seems to have been derelict in not at least checking sooner to be sure the flags were set up properly, and for asking someone else to give the green flag signal, any discipline issued Mr. Valdez should have been progressive providing an opportunity to modify

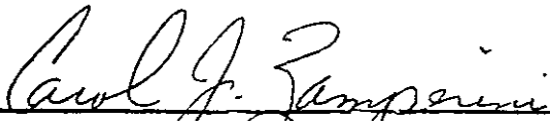
his actions. He should have been warned, either verbally or in writing that his behavior was unacceptable before more serious disciplinary action was taken. Disqualifying Mr. Valdez as a Class 1 Track Foreman is too severe when the infraction and the employee's record and length of service are considered.

AWARD

The claim is sustained in part; Mr. Valdez is to be returned to his qualification in Class 1, Track Foreman, effective within thirty (30) days of the issuance of this Award; any reference to the incident in the Grievant's employment record shall be considered a warning.

ORDER

The Carrier shall comply with the above Award within thirty (30) days of the submission date.


Carol J. Zamperini, Neutral

Submitted:
Denver, Colorado
July 17, 1984