

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - R. Melendez
Award No. 101
Case No. 101

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 suspend Claimant from its service for a period of five (5) days 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 Employee 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.

On September 27, 1989, the Claimant was directed to appear at a formal investigation in the office of the Assistant Division Engineer at Dunsmuir, California, on Tuesday, October

17, 1989, to determine his responsibility, if any, in violating Rule 604 of the Chief Engineers Instructions for the Maintenance of Way and Structures. The rule cited reads as follows:

Rule 604: DUTY-REPORTING OR ABSENCE:
Employees must report for duty at the designated time and place. They must devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties or substitute others in their place without proper authority.

Continued failure by employees to protect their employment shall be sufficient cause for dismissal.

After reviewing the evidence presented at hearing, the Carrier determined there was sufficient proof that the Claimant had violated the above mentioned rule and suspended him for five (5) days.

On August 25, 1989, the Claimant was the Steel Gang Foreman at Mott, California. On that day he was to assume duty between Mott and Small. Because he felt he was experiencing a recurrence of a dependency problem he had suffered and been treated for the previous year, he believed it was necessary to admit himself to a rehabilitation center. His previous dependency had resulted in a Rule G violation and his dismissal in December, 1988. However, instead of contacting the Roadmaster, Mr. Holleman, on August 25, 1989, he advised his truckdriver and timekeeper he would not be in. According to the Claimant's testimony, he was going to attempt to enter himself into a rehabilitation center, which he did, on August 27, 1989. The next time he called in was August 28, 1989, at 12:15 p.m..

Upon his return to work, he provided a statement from Case Manager, Michael C. Sale, indicating he had entered the treatment program on August 27, 1989. He completed the treatment on September 26, 1989.

Following the October 17, 1989, investigation, the Carrier notified the Claimant by letter dated October 27, 1989, that, "Evidence adduced at formal hearing held . . . on Tuesday, October 17, 19889. . . established your responsibility in connection with your absence from work without leave on August 25, 1989, which is in violation of Rule 604" . . . "For reasons stated, you are hereby suspended for five days, November 21, 22, 23, 24 and 27, 1989."

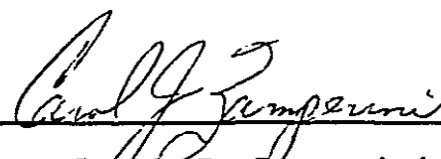
As discussed at hearing, the Claimant had been given a letter of instruction for his absence on August 25, 1989. As a result, that particular date was to have been removed from the charge letter. Under these circumstances, it is difficult for this Board to appreciate why the discipline letter issued by the Carrier on October 27, 1989, would only reference August 25, and not the other dates mentioned on the charge letter. It would appear, that the Carrier accepted the Union's contention that Rule 33 allowed the Claimant the opportunity to provide a medical excuse after the fact. If that were the case, the only date for which the Claimant did not report would have been August 25, 1989. And if that is the case, it would appear the Claimant has already been disciplined for that absence when he was issued a Letter of Instruction on August 28, 1989. To then hold a hearing and issue him a five (5) day suspension for the

same day's absence would be punishing the Employee twice for the same rule infraction and would be unacceptable.

Since the penalty issued by the Carrier was for the Claimant's absence on August 25, 1989 and since the Claimant had been previously disciplined for being absent on that day, the five (5) day suspension is ruled inappropriate.

AWARD

The five (5) day suspension issued to the Claimant for his absence on August 25, 1988 constitutes double punishment for the same offense and is deemed inappropriate. The Claimant is to be reimbursed for any wages or other benefits lost as a result of that suspension and his record is to be cleared.



Carol J. Zamperini
Neutral

Submitted:

December 26, 1989
Denver, Colorado