

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - J. H. Ulloa  
Award No. 102  
Case No. 102

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 fifteen (15) 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 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 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.

The Claimant was working as a laborer on September 18, 1989. He was helping to move rail in the yard at Industry, California, MP 501.3. At some point during the morning, he was

guiding a rail which was being moved by a boom truck operated by his Foreman, Alex Avilar. Allegedly he was working too close to the rail as it was being raised by the boom. The Claimant had eyeballed the center of the rail and placed the rail tongs at that point. Apparently the tongs were not properly centered on the rail. As a result, the rail tilted to one side as it was being raised. It lodged against a tie plate and bounced backwards. As it did, the Claimant's thumb was struck by the rail and fractured.

The Foreman did not become aware of the injury until around 2:00 p.m..

As a result of this incident, the Employee was sent a charge letter and advised to report for a formal hearing to be held on October 19, 1989. The purpose of the hearing was to determine whether the Claimant's actions constituted a violation of Rule 607(1), which reads:

Rule 607(1): CONDUCT:

Employees must not be:

(1) Careless of the safety of themselves or others;

The Carrier believed the evidence supported the charges and issued fifteen (15) demerits to the Claimant's record.

It is obvious from his record, the Claimant is a good worker. He has been employed by the Carrier for seventeen (17) years. During that time he has no recorded discipline, except for the fifteen (15) demerits at issue here.

What his record also shows is a history of injuries. Fortunately, the injuries have been spread over sixteen years of

service. However, the evidence indicates the Company was concerned about the Claimant's injury record and placed him in the Accident Repeater Program in the year prior to this accident. These two facts should have created a greater awareness in the Claimant. In the case before us, the Claimant should have realized the potential dangers when it became apparent the tongs had been located off-center. If not then, he should have been more cautious once the rail became jammed. It seems to this Board the Claimant had two options when he saw the rail was dragging. He could have moved farther away or he could have advised the foreman to lower the rail so that it could be reattached. He did neither.

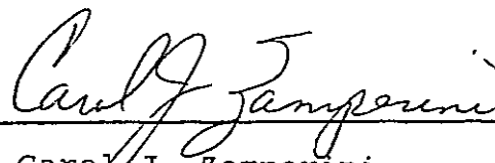
The Carrier provided the Claimant with significant evidence of their concern for his injury record when they placed him in the Repeater Program. Besides this, the injury to the Claimant would have been avoidable if he had only moved away or reset the rail tongs. Therefore, this Board does not believe the fifteen (15) demerits issued to his record is unreasonable.

The Claimant was afforded a full and fair hearing. The actions of the Carrier were justified.

947-102

AWARD

The Claim is denied.

  
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Carol J. Zamperini  
Neutral

Submitted:

March 16, 1990  
Denver, Colorado