

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - D. A. Pearce
Award No. 103
Case No. 103

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 suspend Claimant from its service for a period of five (5) work 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 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 is a Track Laborer for the Track Sub-department, Western Seniority District, Oregon Division. He has been charged in this matter with failing to promptly report

an injury which allegedly occurred on Friday, October 27, 1989, near Castle Craig, California. The Claimant was working as a laborer on Extra Gang 69 on the day of the purported injury. The Carrier alleges that by failing to report the injury in a timely manner, the Claimant has violated Rule 806 of the Rules and Regulations for the government of Maintenance of Way and Structures and Engineering Department Employees. The rule reads:

Rule 806: REPORTING:

All cases of personal injury, while on duty or on Company property must be promptly reported to proper officer on prescribed form.

After reviewing the evidence from the investigation held on Monday, November 27, 1989, the Carrier notified the Claimant by letter dated December 5, 1989, they believed there was sufficient proof to support the charges. He was suspended for five (5) days.

There are very good reasons for the Carrier to request that an employee who is injured on the job, as well as, any witnesses to the accident, fill out a 2611 Report. For one thing, it is important that the authorities be aware of an accident when it occurs or close to when it occurs in order to conduct a proper investigation while the incident is fresh in everyone's mind. Accidents also need to be reported so that the Carrier can protect itself against dishonest employees who may claim an on-the-job injury when in fact, they were injured off the job. It is also important for the Carrier to know about accidents as soon as possible so the proper medical treatment can be provided to those who are injured. Because of these responsibilities,

the rule requiring the prompt reporting of injuries is not unreasonable.

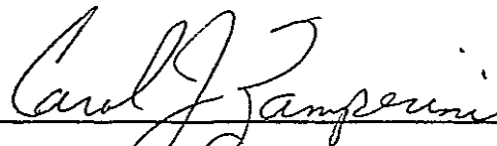
In this case, it is clear to the Board that practically everyone with whom the Claimant worked on the day he was injured, was aware of exactly what had occurred. As supported by testimony, there was no doubt in any of their minds the Claimant had injured himself, to some extent. And as the day proceeded, it was recognized that the Claimant's injury worsened. Those who knew about the injury included the Claimant's Track Foreman, the Labor Operator, who was serving as Track Supervisor on the day of the incident, and the Machine Operator. At least two of those involved had authority over the Claimant. They should share in the Claimant's responsibility in not reporting the accident to the Roadmaster and in not filling out the 2611's. In fact, it seems to this Board the Claimant complied with the essence of the Rule by reporting his accident verbally not only to his immediate supervisor, but to one other supervisor. He then continued to keep his immediate supervisor apprised of the increased difficulties he was having through the work day and on Saturday.

While the Claimant's record seems to be free of any actual discipline. The exhibits indicate he has been issued three letters of instruction concerning Absence Without Authority. In some cases, this fact might serve to support the suspension issued to the Claimant. However, in this case, the Claimant is somewhat exonerated by the fact he verbally reported the accident to the proper authorities. Because of this, the Board

finds the penalty issued excessive.

AWARD

The five (5) day suspension issued to the Claimant is to be reduced to thirty (30) demerits. He is to be reimbursed any wages and benefits lost as a result of this suspension.



Carol J. Zamperini
Neutral

Submitted:

March 19, 1990
Denver, Colorado