

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - F. Aguirre
Award No. 105
Case No. 105

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 for a period of fourteen (14) 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.

On November 8, 1989, the Claimant was notified to be present at a formal investigation to be held at the office of the District Engineer, 221 Langtry, El Paso Texas, November 15,

1989, for the purpose of determining his responsibility , if any, in failing to protect the movement of tamper 0260247, at milepost 1183.20 at road crossing US 70 near Duncan, Arizona. He was charged and subsequently determined guilty of violating Rules 607 of the Rules of the Maintenance of Way and Structures and Rule 1.7.7 of the Chief Engineer's Instructions for the Maintenance of Way and Structures, which read as follows:

Rule 607. Conduct: Employees must not be:
(4) Negligent;

Any act of. . . negligence affecting the interests of the Company is sufficient cause for dismissal. . .

Rule 1.7.7: Foreman and others in charge of work are responsible for the safety of their men and must see that no unnecessary risks are taken. They should bear in mind that safety is the first and most important consideration.

On the day of the accident, tamper 026600247 fouled the road crossing at US 70 near Duncan, Arizona. As a result, a semi hit the tamper. At the time, the Claimant, F. Aguirre, who was the Foreman of the gang, was switching the last tamper, 250RD out of the siding. According to the testimony of both the Company witness, Mr. Kyser, Roadmaster for the Deming District in New Mexico, and the Claimant, this particular gang had no laborers, but five machine operators, including the Claimant.


The basic charge against the Claimant stems from the allegation that he did not either protect the tamper himself by flagging the intersection or at least did not assure that one of the members of the gang would have performed that function. However, there is no proof to support the Carrier's contention.

In the first place, there was no evidence presented in the transcript provided to the Neutral which indicated a failure on the part of the Foreman to direct his staff to flag the intersection prior to their crossing it. Second, and perhaps more significant, was the testimony of the Roadmaster, Mr. Kyser. He clearly stated, "each employee is responsible for his machine at the crossing." Certainly if that is the understanding of the Roadmaster, it is reasonable to assume it is also the premise by which each Foreman functions, especially in a gang which has no laborers to send out ahead to accomplish such tasks as flagging intersection.

In view of the testimony of the Roadmaster and the lack of evidence against the Claimant generally, this matter should be reversed.

AWARD

The Claimant's record is to be expunged of any mention of this incident; he is to be reimbursed any wages and other benefits lost as a result of his fourteen (14) day suspension.


Carol J. Zamperini
Impartial Arbitrator

April 26, 1991
Denver, Colorado