

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - L. L. Schad
Award No. 106
Case No. 106

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 assess Claimant sixty (60) 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 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 Employees 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.

A formal hearing was held on December 5, 1989, to determine whether or not the Claimant had violated Rules 1051 and 607 of the Rules and Regulations for the government of the Maintenance of Way and Structures and Engineering Department Employees.

On December 18, 1989, the Carrier notified the Claimant that the evidence from the investigation indicated he had violated the following portions of the above cited rules:

Rule 1051: RESPONSIBILITY:

They have charge of and are responsible for the safety of their men and for the safe and economical maintenance of track and roadbed assigned to them. They must keep records and make prescribed reports of labor and material.

Rule 607: CONDUCT: Employees must not be:

- (2) Negligent;
- (6) Quarrelsome.

Any act of hostility, misconduct or willful disregard or negligence affecting the interests of the Company is sufficient cause for dismissal and must be reported.

Courteous deportment is required of all employees in their dealings with the public, their subordinates and each other. Boisterous, profane or vulgar language is forbidden.

The incident which precipitated the investigation occurred on October 20, 1989, when the Claimant allegedly became quarrelsome and negligent near MP 534.1 near Cresent Lake, Oregon, while working as Track Foreman replacing rail. The Claimant was at first directed to put new rail into a section of track by welding the new section in place. Because of delays in getting the rail at the work site, he was subsequently directed, via radio, not to weld the section, but to bolt it into place in order to avoid overtime. After receiving these instructions, the Claimant unilaterally made the decision to weld one end of the section while bolting the other. However, since the rail arrived later than expected, it was necessary to obtain more

track time. While he was contacting the Dispatcher from his truck, 40' from the actual work site, the Track Supervisor arrived on the scene and told the welders to bolt both ends of the rail. When the Claimant returned from his truck, he became irate that the Supervisor had contradicted his directions. He then turned the job over to the Supervisor, despite being asked to finish the job, and he then released his track time.

Because of his refusal to continue the job in the manner directed by his Supervisor, charges were filed against the Claimant.

On the day of the incident, the Track Supervisor could have handled the matter more effectively. This Board empathizes with the Claimant on the matter of the failure of the Track Supervisor to discuss the problem with him directly before altering the directions he had given to his crew. At best, this put the Claimant in an awkward position with the men who worked with him.

That said, however, we must consider whether the Track Supervisor's error excuses the Claimant's behavior. The Board does not believe it does. He, too, erred when he verbally chastised the Track Supervisor in front of other employees. Besides, he had been given directions as to how the Roadmaster wanted the job completed. He had an obligation to either do the job in that manner or to contact one of his two supervisors to suggest the job be done otherwise. While it is certainly true, a foreman has to be allowed flexibility in directing his crew, once his supervisors give explicit instructions on how they want

a job done, s/he must communicate with them, if at all possible, before altering these instructions. In addition, it is a well-established rule in labor relations that if an employee feels he has been wronged, he must address the problem through his Union and the Agreement. He cannot resort to "self-help". The Claimant should have completed his job as instructed and then taken the matter up with his Union.

Even though there is no evidence the Claimant violated Rule 1051, as cited, the Claimant was quarrelsome. And he was negligent to the extent he refused to continue working and released his track time, refusing to get it back. In these respects he was guilty of violating Rule 607.

The Claimant was afforded a full and fair hearing. Considering his behavior and his record, the sixty demerits issued in this case are justifiable.

AWARD

The claim is denied.



Carol J. Zamperini
Neutral

Submitted:

March 29, 1990
Denver, Colorado