

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - S. E. Midbust
Award No. 107
Case No. 107

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 for a period of three (3) 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 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.

On January 24, 1990, near Rawson, MP 218.5, the Claimant was driving a mobile crane which was picking up scrap behind a tie gang. Allegedly, he failed to make sure the way was clear

upon entering a siding and the operator of the crane knocked over a dwarf signal. The operator was offered and accepted thirty (30) demerits and signed a waiver. The Claimant was offered, but rejected a waiver which would have given him a three (3) day suspension. He was subsequently notified to appear for a formal hearing to be held at Dunsmuir, California on Friday, February 9, 1990, to determine whether he had violated Rules 1.1.30 and 1.1.31 of the Chief Engineers Instructions for the Maintenance of Way and Structures, those portions which read:

Rule 1.1.30:

Crane Operators shall only accept signals from those specifically designated and authorized to give same.

They must not move loads unless they are sure that the way is clear. Employees must not go under load or boom except when necessary and must be clear when load is freed to avoid being caught between load and other object.

Rule 1.1.31:

Employees handling or operating moving equipment must be prepared to stop short of persons or objects.

On the day of the incident, the Claimant was driving a crane, while the operator of the crane was picking up scrap around the tracks by use of a magnet attached to the end of the boom. Near MP 218.5, they entered into a siding from the main line. A dwarf signal was located in the siding beyond the switch. After clearing the switch, the operator began swinging the magnet. He was on the opposite side of the dwarf signal and his vision was blocked by the boom. The only person who could

see the dwarf signal was the driver, who could observe the structure through his rear view mirror. He was also able to see when the magnet approached the signal. Despite this, the driver did not signal the operator to center his boom, nor did he slow down or stop as he neared the signal. Either of the latter actions would have indicated to the operator that they were approaching an obstacle. Without this indication from the driver, the operator continued swinging the magnet and dragged it over the dwarf signal, pulling it out of the ground. The total cost of the damage was \$4000.00.

In this matter, the Claimant would have the Board believe he should not be held responsible because the crane operator should have known where the dwarf signal was simply because he had been in and out of the siding many times. However, earlier in his testimony the Claimant explained that the direction of travel determined who was responsible for giving instructions and in this case it was his responsibility. Besides, unlike the operator, the driver's vision was not hampered and he was in a position to see ahead of time any obstacles. It was his obligation to signal the operator. He was also able to stop the vehicle short of the object, but chose not to do so.

The Claimant also excuses his lack of action by contending the operator had no reason to swing out the boom and use his magnet since there was no scrap in the area. But, there was no evidence presented to show an absence of scrap. And even if there was, the Claimant testified that he was able to see the boom of the crane. If he felt there was a problem using it in

that area, he had the option of slowing down or stopping. Regardless, the absence of scrap would not excuse his failure to signal the operator.

The Union raises the argument of disparate treatment since the operator was offered a waiver of thirty (30) demerits, while the Claimant was offered a waiver with a three (3) day suspension. There are cases when disparate treatment is sufficient cause to overturn penalties which are issued. It is questionable here, whether the penalties issued actually constitute disparate treatment. In the Board's view, the Claimant was in a better position to see obstacles and was in control of the forward motion of the vehicle. It was also a matter of past practice that the individual in the forward moving direction signaled the other employe of impending hazards. The Claimant failed to do this. Based on normal operating procedures it was his responsibility. Therefore, in this case, assessing different penalties to the two employes goes to who had the greater responsibility.

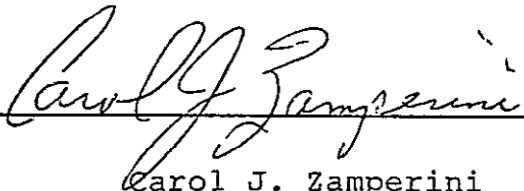
Finally, the Board has considered whether or not the penalty assessed to the Claimant was appropriate in view of the rule violation and the Claimant's overall employment record. The Claimant has been issued demerits on two other occasions for damaging railroad property. Besides these instances, he has been counseled concerning other rule violations. Because of this the Board does not believe the discipline is excessive.

The Claimant was afforded a full and fair hearing. The Carrier met its burden of proof and the penalty was reasonable.

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AWARD

The claim is denied.


Carol J. Zamperini
Neutral

Submitted:

March 30, 1990
Denver, Colorado