

SPECIAL ADJUSTMENT BOARD NO. 947

Award No.11
Case No. 11

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Southern Pacific Transportation Company (Western
Lines)

STATEMENT
OF CLAIM

1. That the Carrier violated the provisions of the Agreement when, after reviewing the testimony of a formal hearing held on March 22, 1983, they notified Mr. Kenneth Patrick Gooch, Utility Tractor Backhoe Operator, by letter dated April 26, 1983, that he was assessed sixty (60) demerits to be placed against his discipline record as a result of an alleged violation of Rule 801, this action being unjustified especially in view of Rule 39 in the Agreement between the Company and the Brotherhood of Maintenance of Way Employees.
2. That Mr. Gooch be exonerated of all charges related to his submission of eight hours worked on his Semi-Monthly Time Roll which he submitted for February 16 -25, 1983.

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 the arbitrator being sole signatory.

The incident at hand actually involved a previous incident which

occurred on February 25, 1983, when Mr. Kenneth Gooch was alleged to have left his duty assignment early without permission. On that date he was confronted at his home around 11:05 A.M. about leaving his duty assignment early and the keys to his Company vehicle which he had driven off Company property were taken from him. His Supervisor, Mr. David Raymond Voris then advised him he would get back to him after it a course of action was determined. When his normal lunch hour was over, Mr. Gooch reported to his headquarters in Eureka for further orders. In the meantime Mr. Voris had returned to the Grievant's home looking for him. When he could not find him there, he returned to headquarters where he found Mr. Gooch waiting. At approximately 11:55, the Supervisor advised Mr. Gooch he was suspended from service.

Mr. Gooch, uncertain as to how to fill in his time card for that day, phoned his Union Representative, Mr. Price. He was told to record eight (8) hours for the day since he had not been removed from service until 11:55 A.M. over four (4) hours after he reported to work and the Union Representative believed Rule 39 of the Agreement (Rule 41 in the current Agreement) provides for eight (8) hours pay for time worked in excess of four (4) hours if an employee is sent home by the Company.

On March 15, 1983, the Company sent a letter to Mr. Gooch directing him to report to the Office of the District Maintenance of Way Manager in Eureka, California, at 1:00 P.M.,

Tuesday, March 22, 1983, for a formal hearing to investigate the allegation that on February 25, 1983, he had falsified his timeroll by recording he was on duty when he was actually absent. He was further advised he was being investigated for violating Rule 801. Following that hearing the Company sent Mr. Gooch a letter, dated April 26, 1983, upholding the charge and assessing him sixty (60) demerits against his discipline record.

The Company has failed to meet its burden in this matter. This is particularly evident from the testimony of Mr. Voris, the Supervisor, who time again stated that Mr. Gooch had been on duty from 7:00 A.M. until he was removed from service at 11:55 A.M. That five hours less the one-half hour lunch period, constitutes four and one-half (4 1/2) hours of on duty time. According to Rule 39, ". . . If held on duty over 4 hours, a minimum of 8 hours shall be allowed." Although Mr. Gooch did not return to work after 10:50 A.M., he was not removed from service until 11:55 A.M. and was available for Mr. Voris' orders. When Mr. Gooch was confronted at his home by Mr. Voris and told he was in violation of Company Rules, he asked "What do we do now?", at that time Mr. Voris told him he had to contact Mr. J. T. Hall and would let him (Mr. Gooch) know the results of that conversation. It was Mr. Voris' responsibility to advise Mr. Gooch he was removed from service; something he could not do until consulting someone else. As a result, Mr. Gooch remained available until removed from service at 11:55 A.M. more than four hours from the time he first reported for duty. I reiterate,

even Mr. Voris' testimony demonstrated a recognition of the four (4 1/2) hours put in by Mr. Gooch and that his removal from service took place at 11:55 A.M. (pp 8, 10, 11). Even if Mr. Gooch was not entitled to eight hours pay, which I believe he was, his confusion over the number of hours he was entitled to would not seem unlikely in view of Mr. Voris' own conception that Mr. Gooch had put in four and one-half (4 1/2) hours of time. There is no proof of dishonesty on Mr. Gooch's part in this matter. This was also supported by the statement of the Union Representative, Mr. Price who stated he believed Mr. Gooch qualified for eight (8) hours pay and had advised Mr. Gooch how to fill out the timeroll card.

In addition to the above rationale, the current Agreement, Rule 38, provides the Company can disallow pay as long as the individual affected is notified in writing promptly of the reason for the disallowance. The Company therefore could have notified Mr. Gooch the pay was being disallowed. Mr. Gooch, thereafter, could have filed a grievance if he felt unjustly denied. The Company did not disallow the pay.


The Company did not meet its burden in this case. Discipline was meted out to Mr. Gooch unjustly.

AWARD

The claim is sustained; the sixty (60) demerits placed against Mr. Gooch's disciplinary record as a result of the timeroll he submitted for February 25, 1983, shall be removed from his record, along with any reference to this specific incident.

ORDER

The Carrier will comply with the Award herein within thirty (30) days from the date hereof.



Carol J. Zamperini, Neutral

Submitted:

Denver, Colorado
July 17, 1984