

SPECIAL ADJUSTMENT BOARD NO. 947

Award No. 12
Case No. 12

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

1. That the Carrier violated the provisions of the Agreement when they assessed 20 demerits against the employment record of L. M. Anguiano, Laborer, Extra Gang 49, for allegedly violating Rules M and 811, such Company action being excessive since the accident involved was caused by the fact the Supervisor was performing double duty.
2. That all charges against the accused be rescinded.

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 the arbitrator being sole signatory.

On December 9, 1982, at MP 509.0 near Anaheim, the Grievant, Mr. L. M. Anguiano and another employee were moving ties when one of the ties they were pulling rolled on the foot of Mr. V. A. Rosas causing an injury. The accident was not reported until the next

morning, December 10, 1982. After a formal hearing the men involved, including the Foreman, were charged with violations of Rules M and 801. The Company cited carelessness and failure to report the incident when it happened.

On the day of the incident, the men were loading ties, including lengthy switch ties onto a truck. Two of the men, Mr. Anguiano and Mr. Servando Izaguirre Izaguirre were picking up the ties and placing them on a cross tie to make it easier for the next group to grab the ties and push them onto the truck. At around 9:30 A.M., one of the ties rolled off the cross ties and fell on the foot of Mr. Valente A. Rosas. When he removed his shoe, it was obvious he had injured his foot. At some time during the day, Mr. Rosas reported the injury to the Foreman, Mr. George E. Martinez. It was not reported to the office at Dolores, California until the morning of the following day.

Mr. Anguiano was employed with the Company on February 2, 1956. He has a clean Employment Record. In this instance he and Mr. Izaguirre were not as careful as they might have been in placing ties onto the cross ties. As a result, one of the ties rolled off injuring the foot of Mr. Rosas. The accident was subsequently reported to the Foreman. As a result, no one else would have felt compelled to report the accident to the company clerk, Mr. Doran, at the Dolores office. Although the employees may warrant some discipline for not being more careful, they cannot be held responsible for not reporting the accident.

Their immediate Supervisor had been notified of the incident. It then became his responsibility to notify the appropriate officials. The penalty in this case should be reduced.

AWARD

The claim is sustained in part; the penalty against Mr. Anguiano is reduced to ten (10) demerits.

ORDER

The Company shall comply with this Award within thirty (30) days of the date of issue.



Carol J. Zamperini, Neutral

Submitted:
Denver, Colorado
July 17, 1984