

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - R. E. Khalial
Award No. 121
Case No. 121

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 sixty (60) 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 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.

By letter dated January 30, 1991, the Claimant was notified to be present at a formal Investigation to be held on Friday,

February 8, 1991 at the Office of the District Engineer, Roseville, CA. The hearing was to determine his responsibility, if any, in failing to stop the Bantam Crane he was operating on January 25, 1991, thus running into a Hi-rail Car which in turn ran into the back of a Sperry Rail Detector. He was charged with violating portions of Rules I, 618 and 962, of the General Rules of the Rules and Instructions for the Maintenance of Way and Structures and Engineering; Rule 1.2.19.1 Roadway Machine Operators for the Maintenance of Way and Structures and Engineering; Rules 3, 4, and 5 of the Safety Regulations of the Rules and Regulations for the Safe Operation and Care of Work Equipment, which read:

Rule I: Employees must exercise care to prevent injury to themselves or others. They must be alert and attentive at all times when performing their duties and plan their work to avoid injury.

Rule 618: DEFECTIVE EQUIPMENT, that portion reading:

Employees must observe the condition of equipment and tools which they use in performing their duties and if found defective must not use them until they are put in safe condition. Defects must be reported to the proper authority. . .

Rule 962: BRAKES, that portion reading:

A running brake test must be made at the beginning of each trip while the track car is under control to see that the brakes are in operative condition.

Exercise caution in brake applications on wet or frosty rails to prevent sliding wheels and loss of braking power. Under adverse weather or rail conditions, more distance must be allowed in which to stop the car. . . .

Rule 1.2.19.2: ROADWAY MACHINE OPERATORS, that

portion reading:

They will be held responsible for the safety, care, maintenance and performance of the machines to which they are assigned. An immediate report will be made to the proper authority when a machine is out of service or not performing properly. If a safety device is not operating properly the operator will take every precaution for safety. If the machine cannot be operated safely it will be removed from service and reported to the Work Equipment Supervisor and District Engineer. They will be governed by instructions of Work Equipment Supervisor or roadway mechanics regarding the maintenance and operation of machines. . . .

Rule 3: SAFETY REGULATIONS, that portion reading:

Equipment shall not be operated in a manner to endanger life, limb or property. . .

Rule 4: SAFETY REGULATIONS:

No equipment shall be set in motion until it is known that the way is clear.

Rule 5: SAFETY REGULATIONS:

Operator must make a running test of brakes before actual operation of work equipment.

The Carrier determined the evidence adduced at the hearing was sufficient to support the charges against the Claimant. He was notified by letter dated March 6, 1991 that he was being suspended for sixty (60) days.

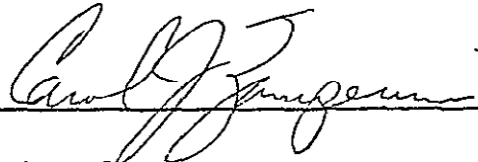
The Carrier has produced significant evidence to show the Claimant failed to operate his equipment at a speed which would have allowed him to stop short of other rail equipment operating in front of him. Even though there may have been a malfunctioning front brake, the evidence produced at hearing revealed that when the crane was tested afterwards, it could be stopped in a reasonable period of time even when traveling at 20

mph. The Claimant, it should be noted, said he was traveling at 10 mph. In addition, the fact there may have been slippery tracks was not a mitigating factor. Instead, any equipment operator has to take that into account when operating his equipment. Beyond these facts, there is little to support the Claimant's contentions that the accident was beyond his control. He must bear the responsibility.

The only question this Board must deal with is the appropriateness of the penalty. Admittedly, the Claimant was guilty of a serious rule violation, made all the more intense by the fact he was driving behind vehicles occupied by other employees, who could have been subjected to injuries. In fact, that is exactly what happened. Fortunately, the injury did not appear to be permanent or life threatening. But, that is not to say it could not have been. Therefore, the Claimant has to realize his responsibility in operating equipment. Safety must be first. However, in view of the fact the Claimant only has one other rule infraction on his record, which occurred nearly three years ago, for which he was issued a ten (10) days suspension, the Board believes a sixty (60) day suspension is excessive, especially in light of the concept of progressive discipline.

AWARD

The claim is sustained in part, the sixty (60) day suspension is to be reduced to a forty (40) day suspension. The Claimant is to be reimbursed any wages and/or benefits lost in excess of the forty (40) day suspension.

A handwritten signature in cursive script, appearing to read "Carol J. Zamperini", is written over a horizontal line.

Carol J. Zamperini
Impartial Arbitrator

Submitted:

September 12, 1991
Denver, Colorado