

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - R. M. Saldivar  
Award No. 125  
Case No. 125

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employes

and

Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

That the Carrier's decision to suspend Claimant from its service for a period of ninety (90) working 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 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 this arbitrator being sole signatory.

By letter dated October 12, 1990, the Claimant was notified to attend a formal hearing on October 22, 1990, at the

office of the District Engineer in Tucson, Arizona, to determine his responsibility, if any, in violating Rules 607, of the Rules and Regulations for the Government of Maintenance of Way and Structures and Engineering Department employees, Southern Pacific Transportaton Company and Instructions 2.12.1, part 2241 and Instruction 2.12.9, part 30, of the Chief Engineer's Instructions for the Maintenance of Way and Structures and Engineering. The charges stemmed from allegations that on September 21, 1990, the Claimant drove a Company Tool Truck which was involved in an accident. The Claimant's driving privilege was suspended at the time. Furthermore, according to the charge letter, the Claimant noticed problems with the truck's brakes before the accident, but failed to stop to inspect the vehicle. As a result, he could not stop the truck at the intersection where the accident occurred. In addition, he was not wearing his seat belt, nor did he require the two co-workers who were passengers in the truck to wear theirs. At the time, the Claimant was not only the operator of the vehicle but was serving as Foreman of the Crew.

After an investigation, the Carrier charged the Claimant with the aforementioned Rules violations. Those Rules read in part:

- Rule 607: CONDUCT: Employees must not be:
1. Careless of the safety of themselves or others;
  2. Negligent; . . .

Any act of . . . negligence affecting the interests of the Company is sufficient cause for dismissal and must be reported.

Instruction 2.12.1:

Automotive equipment owned or leased to the SPT Company will be operated in accordance with the following:

2241 (a) Vehicle operator must have knowledge of and adhere to. . .State. . .laws and regulations affecting the operation of vehicle assigned to his charge.

(b) Before operating motor vehicle operator must have in his possession valid operator's, commercial operator's or chauffeur's license, or temporary permit, as required by law.

Instruction 2.12.9:  
Safety Rules for Operating Automotive Equipment. . . (30) Seat belts must be fastened and adjusted.

The hearing date was postponed and eventually set for November 9, 1991. Following the Investigation, the Carrier determined that the Claimant had violated the aforementioned Rules. He was suspended for a period of ninety (90) working days.

On the day of the alleged Rules violations, the Claimant was working as a Relief Foreman on Rail Gang 8. He went on duty at 7 a.m. and off duty around 5:30 p.m.. He was assigned to drive Company Steel Gang Tool Truck #31000565 which within the last two days had been returned to the field after having been inspected and worked on by Company mechanics. The Claimant, along with his two co-workers, left Mescal, Arizona and headed toward Tucson. When they got off the freeway, they had to stop at two or three intersections. At the second or third, the Claimant either remarked that the brake pedal went down more than usual or said something to the effect that the brakes seemed mushy. He did not stop to inspect the brakes, but continued driving. At the next intersection, he attempted to

slow for the stop light, but discovered he had no brakes. He down shifted and intentionally hit the curb while one of the other employees attempted to apply the handbrake. Their efforts were to no avail. They proceeded into the intersection. A car approaching from the west could not stop in time and hit the left side of the Company truck. The truck continued through the intersection and hit the left rear of a white sedan traveling westward through the intersection. The truck's momentum continued until the Claimant was able to make two right turns and finally stopped in a vacant lot.

When the Division Engineer was informed of the accident, one of the co-workers indicated that none of the three employees were wearing seat belts. This was confirmed by the Supervisor's subsequent investigation which revealed that all three seat belts were still tucked behind the seat.

The Claimant was issued two citations at the scene of the accident. One was a criminal citation for driving with a suspended license. The second was a civil citation for failure to stop at a red light.

None of the employees was injured, but an individual in the white sedan suffered an elbow injury and possible whiplash.

Further investigation revealed that the Claimant did have a valid California license at the time. However, while driving in the State of Arizona he had previously been stopped at a Highway Patrol Check and was unable to verify insurance coverage. Afterward the court granted him an extension in which to provide such proof. The Claimant went to California, his state of

residency, to obtain the information and simultaneously renewed his drivers license, which was due to expire a short time thereafter. He was provided with a temporary permit while he awaited his permanent license. The Claimant had car trouble on the way to Arizona and ended up taking Amtrak from Desert Center, Arizona to Tucson. He left the insurance information and the temporary license in his vehicle. It was subsequently lost. Before the Claimant could transmit the necessary information to the court, his driving privileges were suspended in the State of Arizona. The evidence suggests the Claimant was unaware of the suspension at the time of the accident.

Upon reviewing all the evidence, the Board believes the penalty issued in this case was excessive. Afterall, both the Grievant and his Supervisor testified that the Claimant had no knowledge that his driving privileges had been suspended. Furthermore, the Crew was aware that the truck the Claimant was driving had recently been returned from the shop where it had undergone a thorough inspection and all necessary repairs, including the braking system. This, coupled with the reality they had driven the truck for over eight (8) hours that day without incident, lends credence to the Claimant's contention that he did not stop immediately when the brake pedal seemed to descend too far because he felt it was a temporary problem. Especially since the brakes held at that particular intersection which immediately preceeded the intersection where the accident occurred. His position would not have been valid if he had experienced problems with the brakes on more than once instance,

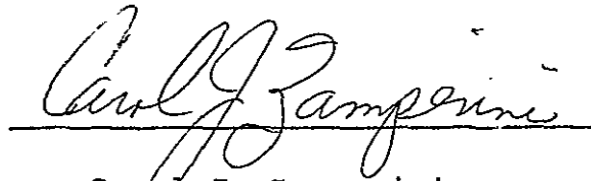
but such was not the case. Although hindsight would suggest the driver should have stopped to assure that a brake problem did not exist, his reaction did not amount to negligence as defined by Webster, namely, "Marked by or inclined to neglect, esp. habitually. Extremely heedless."

It is true the Claimant did operate a Company vehicle without having a valid permit in his possession (on his person). He should have known better. However, he did have a valid driver's license from the State of California, as was verified by the investigation held after the accident. It is equally true that the Claimant failed to require seat belts be worn by everyone in the truck. It is extremely fortunate for all concerned there were no injuries to any of the employees. While he must assume the majority of the responsibility for the latter, it is also true the other passengers should bear some responsibility. None-the-less, the Claimant must learn to recognize obvious shortcomings in his actions. These two failings caused the Company a great deal of embarrassment and may impact on their liability to the nonemployees involved. For these reasons, the Claimant does warrant a substantial penalty. But, as mentioned previously in this opinion, the penalty issued was excessive, particularly in light of the Claimant's lengthy tenure and apparent excellent employment record.

#### AWARD

The ninety (90) working day suspension is to be reduced to a twenty (20) working day suspension; the Claimant is to be

reimbursed all wages and benefits lost in excess of the twenty (20) working day suspension.

A handwritten signature in cursive script, reading "Carol J. Zamperini", written over a horizontal line.

Carol J. Zamperini  
Impartial Arbitrator

Submitted:

November 29, 1991  
Denver, Colorado