

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 129
Award No. 129

Claimant: R. D. Morse

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE Southern Pacific Transportation Company

STATEMENT
OF CLAIM

1. 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 Collective Bargaining Agreement.
2. 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 September 16, 1991, the Claimant received a letter advising him to appear at a formal investigation to be held at the Office of the Superintendent, Tucson, Arizona, beginning at 9:00 a.m.. The purpose of the hearing was to determine whether or not he was responsible for violating Rules 607 and 609 of the Rules and Regulations for the Government of Maintenance of Way and Structures and Engineering Department Employees, Southern Pacific Transportation Company. The applicable portion of the cited rules read as follows:

Rule 607: CONDUCT; Employees must not be;
(4) Dishonest. . . .

Any act of . . . misconduct . . . affecting the interests

of the Company is sufficient cause for dismissal. . .

Rule 609: CARE OF PROPERTY: . . .Employees must not appropriate railroad property for their personal use.

Following the Investigation, the Carrier reviewed the evidence presented at hearing and determined the Claimant had violated the rules as cited. He was suspended for ninety (90) working days.

The evidence produced at hearing showed that during working hours, employees had begun repairing the track on a siding that was the property of one of the Carrier's customers. At some point, they were informed that the maintenance of the siding was actually the responsibility of the customer not the Carrier. When the customer was advised of the situation, he asked the Track Supervisor (Claimant) to recommend someone to complete the work. The Claimant provided the name of a Track Foreman who was subsequently contracted to make the repairs. The Claimant and the Foreman arranged to have two other employees assist them after work. Each of the other two employees were paid \$50.00, while the Claimant and the Foreman shared \$500.00. In addition, there does seem to be sufficient evidence based on the early interviews with the Track Supervisor and Foreman, that there was at least some use of Company equipment in completing the repairs. Beyond that, the work was not completed with the kind of expertise the Carrier would expect from its employees. Since it was known that the individuals who completed the repairs were employees of the Carrier, there was a great deal of concern on the Company's part that the poor workmanship would adversely affect their reputation. As a result, the Employees were charged with the aforementioned rule violations.

The manner in which the Claimant responded to questions asked by his Supervisor following the incident leads this Board to conclude that he and the Track Foreman were aware they were violating the Rules and Regulations of the Company by using Company property to repair the customer's track siding. They were less than forthright in the manner in which they responded to the inquiry concerning whether or not they had utilized such materials. Furthermore, since both were in a position of authority, it was totally irresponsible of them to involve other workers in actions which could have resulted in serious penalties. There is no doubt the Claimant and the Foreman governed what occurred, as well as, what Company equipment was used. It is also obvious through their testimony and the testimony of the other two employees, that the Claimant and the Foreman were the ones who profited most by the agreement with the

Carrier's customer.

In reviewing the Claimant's previous work record, this Board notes he was suspended for five (5) days in 1984 for making improper repairs. Since that point in time, and prior to that time, his record has been clear. On that basis, the Board believes that despite the seriousness of the current rule violations, the penalty issued was too severe and should be modified as outlined in the Award.

AWARD

The ninety (90) working day suspension is to be reduced to a sixty (60) working day suspension. The Claimant is to be reimbursed the difference in lost wages and benefits.


Carol J. Zamperini
Neutral

Submitted:

May 14, 1992
Denver, Colorado