

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 133
Award No. 133

Claimant: J. J. Ramirez

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 sixty (60) 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.

On November 15, 1991, the Claimant was working as a Welder's Helper at Dolores Yard MP BG 492.2. Around 2:30 p.m., he and the Track Supervisor got into a heated discussion. After a while, the Claimant allegedly lunged at the Track Supervisor, hit him in the face and knocked him down. The Track Supervisor was injured and had to seek medical assistance.

As a result of the confrontation, the Claimant was advised by letter to appear at a formal investigation to determine whether or not he had violated the Rules and Instructions for the Maintenance of Way and Structures and Engineering, Southern Pacific Transportation Company. The following sections of rules were cited in particular:

Rule A: Obedience to the rules is essential to safety and to remaining in service.

The service demands the faithful, intelligent (sic) and courteous discharge of duty.

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 607: Conduct: Employees must not be:

- 3. Insubordinate;. . . .
- 6. Quarrelsome.

Any act of hostility, misconduct or willful disregard of negligence affecting the interests of the Company is sufficient cause for dismissal and must be reported.

Indifference to duty, or to the performance of duty, will not be condoned.

Courteous deportment is requested of all employees in their dealings with the public, their subordinates and each other. Boisterous, profane or vulgar language is forbidden.

Rule 608: Altercations: Employees must not enter into altercations, play practical jokes, scuffle or wrestle while on duty or on Company property.

The hearing was held on December 4, 1991, beginning at 10:00 a.m.. After reviewing the evidence produced at the hearing, the Carrier issued the Claimant a sixty (60) working day suspension.

There is ample evidence the Claimant was guilty of the charges. His behavior was unacceptable in a work environment. He not only struck a fellow employee, but struck a Supervisor. This overt act of insubordination could well have been penalized by termination.

The Claimant has a fine employment record. Often, such a record would serve to mitigate the penalty issued in a discipline

case. However, the Board believes the Carrier demonstrated appropriate consideration of the Claimant's long and impressive employment record in view of the offense committed by the Claimant. Furthermore, while the Claimant raised the issue of provocation, which might have served to mitigate the suspension, there was simply insufficient evidence to support this charge.

AWARD

The Claim is denied.



Carol J. Zamperini
Neutral

Submitted:

May 21, 1992
Denver, Colorado