

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 135
Award No. 135

Claimant: A. J. Anderson

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Southern Pacific Transportation Company

STATEMENT
OF CLAIM

1. That the Carrier's decision to suspend Claimant A.J. Anderson for a period of five (5) 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 certified letter dated March 31, 1992, the Claimant was notified to appear at a formal Investigation to be held at the Office of Manager of Field Operations, Oakland, California, at 9:00 a.m., Tuesday, April 21, 1992. The purpose of the hearing was to determine whether he was responsible for failing to safely perform his duties as a Machine Operator, on March 2, 1992, thus causing an injury to his back. the following Rules of the Chief Engineers Instructions for the Maintenance of Way and Structures were cited as possibly having been violated:

Rule 607: CONDUCT: Employees must not be:

1. Careless of the safety of themselves or others;

Rule 1.2.19.2: 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.

The hearing was postponed and eventually held on June 24, 1992.

On the day of the incident, the Claimant was assigned to work on the Anchormaster. He went on duty at 7:00 a.m. near Niles, MP 41. His normal quitting time was 3:30 p.m. at the same location. The gang the Claimant was working on the day in question was a steel gang whose function was to lay rail.

On that type of operation, materials needed, including anchors are deposited every three or four poles by a work train which moves ahead of the gang. The anchors are contained in bags with an approximate count of 25 and weighing about 40-50 lbs.. The Machine Operator while operating the Anchormaster uses a motorized winch with a hook to pick up the bags and load them onto the bin of the Anchormaster. However, on the day of the injury, the Machine Operators were loading the bags by hand. One operator would take one end of the bag and another operator would take the other end and they would throw the bag onto the bin. This was observed by the Assistant Roadmaster who was supervising the gang at the time. During this shift the Claimant injured his back. He reported the incident and was immediately taken for medical attention.

The Organization urges that the Claimant performed his job on March 2, 1992, in the same manner he had in the past. He did nothing out of the ordinary. He was observed by his Supervisor throughout his shift.

The Carrier believes the Claimant had an obligation to advise his Supervisors or the Mechanics if the Anchormaster was not functioning properly. Besides he should have been aware that hand loading the bags of anchors would be unsafe.

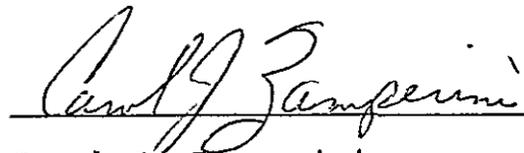
DECISION

The Claimant would be best advised in the future to utilize the machines and other equipment made available to perform heavy lifting and/or moving. However, in the case before us, the Carrier must share the blame for what happened to the Claimant. It is obvious from the testimony of both Organization and Carrier witnesses that Supervisors often observed Machine Operators loading bags of anchors by hand. The failure of Supervision to correct this practice offsets any blame to which the Claimant might normally be entitled. The failure to challenge employees who hand loaded the anchors was tantamount to condoning the practice.

For the reasons discussed above, the Board believes the Claimant was unjustly charged with performing his service in an unsafe manner. Although he is put on notice that hand loading anchors in the future will be unacceptable.

AWARD

The claim is sustained.


Carol J. Zamperini
Neutral

Submitted:

January 13, 1993
Denver, Colorado