

SPECIAL ADJUSTMENT BOARD NO. 947

Award No. 14
Case No. 14
A. R. Sanchez

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employes
and
Southern Pacific Transportation Company
(Western Lines)

STATEMENT
OF CLAIM

1. That the Carrier's decision to disqualify Claimant as Class 1 Track Foreman, Class 1a Inspection and Repair Foreman and Classes 24 and 24a Assistant Foreman was unduly harsh, in abuse of discretion and in violation of the current Agreement.
2. That because the Carrier failed to prove the charges by introducing substantial evidence that it now be required to compensate Claimant for all wage loss suffered and remove all charges 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.

The Grievant in this matter has been employed by the Company since April, 1969. In June, 1974 he was promoted to Foreman. He served in that position until he was disqualified by letter on October 9, 1984 for ". . . violation of Rules 801, 802, E, M and General Notice of the Rules and Regulations of the Southern Pacific Transportation Company." The incidents which precipitated the charges occurred during the period July 23rd through July 27th when the Grievant, who was serving as the Foreman on Extra Gang #71, used a new hy-rail gang truck on the track to haul ties contrary to the instructions of his Supervisor, Mr. Mahon.

The Grievant's record was unblemished for the first ten years of employment, but he has been cautioned about several rules over the last six years. The focal point of the discussions was safety. Aside from these discussions, there were no disciplinary actions taken against the Employee other than his disqualification as Foreman, which is the issue in this arbitration.

On July 19, 1984, Mr. Mahon, District Maintenance of Way Manager, Dunsmuir, California, delivered a new hy-rail truck 11054 to Weed, California for use by Extra Gang #71. He testified that because the truck was new and they had had difficulties with it, he advised the Grievant not to use the truck on the track to haul ties until he or F. E. Samsel could return and demonstrate the proper way to operate the vehicle.

According to the record, neither Mr. Mahon or Mr. Samsel gave operating instructions before the Grievant decided to use the hy-rail truck on the track to haul ties. There was conflicting testimony as to whether or not a "factory" man visited the property and assisted Extra Gang #71 in placing the truck on and off the track. The Company testified they had only arranged for the "factory" man to demonstrate the power tools on the truck not the track operation of the hy-rail. However, the presence of the "factory" man and the assistance he offered may have led the Grievant to believe he had received the instructions Mr. Mahon had required. When Mr. Mahon, Maintenance of Way Manager discovered Extra Gang #71 had used the hy-rail on the track to carry ties at the Foreman's direction, he charged the Foreman with violating Company rules and regulations.

The record shows that sometime after the visit by the "factory" man, Extra Gang #71 practiced putting the hy-rail on and off the track. Subsequently, they utilized the truck to haul rails. Although all indications are that the actions were contrary to the instructions given by the Manager, there is absolutely no evidence, the Foreman acted in an unsafe or careless manner. The testimony of the Grievant and Laborer D. R. Hulett, supports a contention the Foreman was unclear as to the exact instructions given by Mr. Mahon. Mr. Hulett testified that when he suggested to the Foreman they were not to place the hy-railer on the track, the Grievant replied ". . . Mr. Mahon said not to patrol with the hy-rail, he didn't mean we couldn't go 300 feet

on the rail, we weren't patrolling, just going to do our work."

The evidence does not prove Mr. Sanchez was guilty of the safety violations with which he is charged nor does it prove he was guilty of wilfully disobeying instructions from Mr. Mahon. It does show he did not follow the instructions of Mr. Mahon. If his previous record is taken into consideration, it is clear Mr. Sanchez has a deficiency which must be corrected. He appears to be overzealous in his desire to perform for the Company. Normally such industriousness should not be faulted. However, when an employee's actions could jeopardize the safety of others, restraint is necessary. The Company is justified in disciplining Mr. Sanchez for his failure to follow instructions precisely. Especially in view of his past warnings.

Discipline must be corrective in nature; issued in such a way as to allow an employee an opportunity to improve while impressing upon him the requirement to improve. Although, in this case, discipline is justifiable, the Company has failed to use progressive discipline. Other than several verbal warnings (discussions), the Company did not issue a more severe form of discipline until the Grievant's disqualification. Other than in those extremely serious offenses, such as fighting, intoxication, striking a supervisor, it is expected that penalties for similar offenses will intensify. It does little good to continuously admonish the employee. It lulls him into a false sense of security relative to his job performance. It is

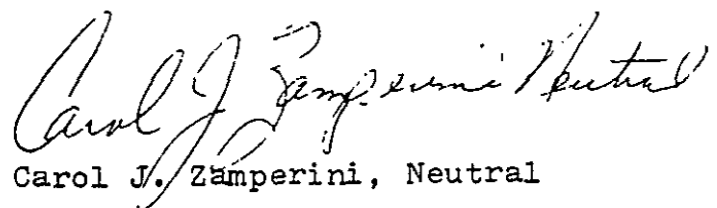
also arguable, that disqualification, absent a strong showing that an employee is incapable of doing the work involved, is an inappropriate form of discipline. Here, there is no showing the Employee could not perform his job.

AWARD

The Claim is sustained in part. The Claimant, Mr. Sanchez is to be reinstated to his position as Class 1 Track Foreman, Class 1a Inspection and Repair Foreman and Classes 24 and 24a Assistant Foreman, effective immediately. Any loss in wages shall be recorded on his personnel record as a suspension from his duties as a Class 1 Track Foreman, Class 1a Inspection and Repair Foreman and Classes 24 and 24a Assistant Foreman.

ORDER

The Company is directed to comply with the above Award within thirty (30) days of the date of issue.


Carol J. Zamperini, Neutral

Submitted:

June 19, 1985
Denver, Colorado