

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 140
Award No. 140

Claimant: J. Romero

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 from its service for a period of five (5) 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.

After reviewing the record from a formal hearing held at Tucson, Arizona, February 18, 1993, the Carrier determined the Claimant had violated Rule 351 of the Rules of the Maintenance of Way and Structures, Southern Pacific Transportation Company, on February 1, 1993, when he failed to lock the selector lever of the east switch of Bon, about MP 908.3, in the hand position. This allowed the dispatcher to operate the power switch and resulted in an injury to Machine Operator L. W. Stein when a

DECISION

It is clear that Rule 351 (Track and Time), requires the Foreman to obtain Track and Time, and, then take control of the applicable track switches by throwing the selector levers into the hand throw mode. The Claimant failed to do this and must bear the responsibility of his decision. It does no good to cite problems that others have had with the dispatchers concerning the reticence of the dispatcher to give up control of the switches. The Claimant should have done what his fellow worker did, (See Exhibit B), namely, refuse to give into the dispatcher and insist on maintaining control of the switch. After all, the Foreman is the person responsible for the safety of his crew. By failing to maintain control of the switch, the Foreman was partially responsible for the injury which occurred to the Tie Handler operator.

Considering the seriousness of the Foreman's actions, the Board believes the penalty issued in this case is reasonable, despite the Foreman's fine work record.

AWARD

The claim is denied.



Carol J. Zamperini
Impartial Neutral

Submitted:

July 14, 1993
Denver, Colorado