

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 144
Award No. 144

Claimant: P. H. Martinez

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 thirty (30) 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.

The Claimant was advised by letter, dated May 26, 1993, that he was to be present at a hearing to investigate allegations that he violated Rules 1.7.7 and 1.7.71 of the General Rules and Regulations for the Government of Maintenance of Way and Engineering Department Employees of the Southern Pacific Transportation Company. The hearing was to be held on June 8, 1993, at the Office of the District Engineer, Roseville, California.

The incident which precipitated the charge letter occurred on May 19, 1993, near MP 222.5, Floriston, California. At the time, the Claimant was the Foreman of Gang 26, a Surfacing Gang. At around 1:30 p.m., he sent the Ballast Regulator Operator down the track to pick up yellow caution flags that were posted at MP 222, two miles from the gang's target area (MP 232.4 -224.0), the area in which they were working, and for which, they did have track and time. The Foreman did not accompany the operator. While the Ballast Regulator proceeded down the track in a westerly direction, the Work Train, which had been working on the track most of the day, was unloading materials and backing up in an easterly direction near MP 222.5. As a result, the train was between the yellow flag and the target area. As they were backing up, they saw the Ballast Regulator coming up behind them. They attempted to stop in order to avoid a collision, but were unsuccessful. The Work Train and the Ballast Regulator collided.

The operator of the Ballast Regulator had never been qualified on the machine, although he had been operating the equipment within his target area, not only on the day in question, but, on other work days, and he had been qualified on similar equipment. According to the testimony, he was traveling at between 10-20 mph when the collision occurred.

After the hearing, the Carrier found the Claimant guilty of violating the cited rules which read in part:

Rule 1.7.7: Foremen and others in charge of work are responsible for the safety of their men and must see that no unnecessary risks are taken. They shall bear in mind that safety is the first and most important consideration.

Employees must do all possible to prevent accidents even though in so doing they necessarily perform the duties of others. In case of doubt, the safe course must be taken.

Rule 1.1.71: When working on or near tracks, employee in charge of work must have line-up of train and engines which might use that track and furnish protection required by the rules.

The Claimant was suspended for thirty (30) days.

The Organization holds that the primary culprit in the accident was poor communications for which the Carrier must shoulder the blame. If the Claimant and the Conductor of the

Work Train had been able to communicate properly, each would have known the exact location of the other. As it was, the Claimant had every reason to believe the Work Train had cleared the area, since the last communication from the Conductor indicated they were releasing their protection and working back toward Truckee, in a westerly direction.

The Carrier maintains the Foreman should have been aware of the location of the work train. At any rate, he should not have sent his crew member to retrieve the yellow flags without having this information.

DECISION

The Board, at least in part, concurs with the Organization's position that the Claimant had reason to believe the Work Train was working beyond the yellow flags in a westerly direction. Why else would the Conductor of the work train have told him over an hour before, that he no longer needed the protection of the Surfacing Gang since they were working back towards Truckee. Therefore, the Claimant should be relieved of some of the responsibility for the accident. However, the Board would be the first to concur with the intimation of the Carrier, that the Foreman should have cautioned the Ballast Regulator Operator to be on the look out for the Work Train.

Beyond that, it is necessary to question the wisdom of the Foreman in allowing someone who had not been qualified on the Ballast Regulator, to take the machine to pick up the yellow flags. This is especially true in light of the fact the yellow flags were outside of the Surfacing Gang's target area. Furthermore, it is one thing to allow someone to operate equipment where they can be observed and quite another to allow someone to simply head off on their own to operate that same piece of machinery unsupervised.

In view of the fact, it has been over seven years since the Claimant was last issued discipline, and, considering the fact he had reason to believe the Work Train was out of the area, we believe the penalty issued was somewhat harsh. It should be reduced according to the Award issued below.

AWARD

The thirty (30) day suspension issued to the Claimant is to be reduced to a twenty (20) day suspension. He is to be reimbursed any loss of wages and/or benefits because of days off work in excess of the twenty (20) days.



Carol J. Zamperini
Impartial Neutral

Submitted:

July 28, 1993
Denver, Colorado