

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 147
Award No. 147

Claimant: R. R. Arredondo

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 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 current 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 Carrier notified the Claimant, by letter dated December 17, 1993, that his presence was required at a formal hearing to be held January 12, 1994; the hearing was subsequently postponed until January 18, 1994. The purpose of the investigation was to develop facts and determine the validity of allegations that the Claimant had failed to properly connect jumper cables while attempting to jump start an End Loader at the Tucson, Arizona

Maintenance of Way Compound on December 16, 1993, causing an explosion, which resulted in injury to the Claimant.

After reviewing the evidence adduced at hearing, the Carrier judged the Claimant responsible for the accident and on February 17, 1994, issued a suspension letter citing the following rule violations:

Rule 1617. JUMPING BATTERIES: When necessary to jump a vehicle battery, the following procedure must be followed:

. . .

(d) Check to be sure that both batteries are of the same voltage.

(e) Check to see that the fluid level is correct. If the fluid is frozen, do not attempt a jump.

. . .

(g) Attach one end of the second cable to the negative terminal of the booster battery and the other end to a ground point on the engine compartment of the vehicle with the discharged battery. The ground must be at least 12 inches from the battery being jumped. .

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Rule 607. CONDUCT: Employees must not be:

1. Careless of the safety of themselves or others;
2. Negligent;

. . .

Any act of . . . negligence affecting the interests of the Company is sufficient cause for dismissal.

At the time of the incident, Claimant was a truck driver assigned to Extra Gang 26 in the Tucson yard. On December 16, 1993, the Claimant was working in the Maintenance of Way Compound at 16th and Park. He was attempting to jump start an End Loader, a Caterpillar, Model No. 920, with a 24 volt battery system. After he connected the cables and attempted to start the engine, two of the four batteries in the system exploded. The Claimant suffered irritation to his left eye, presumably from battery acid.

An investigation was conducted at the scene by the Roadmaster. The following day the Claimant was issued a charge letter. He was eventually offered a waiver of five (5) consecutive days off without pay, which the Claimant rejected.

According to the evidence produced at hearing, employees had trouble starting the particular End Loader during the week or ten

days prior to the subject incident. During this time, they had to jump start the machine. Further testimony revealed that the mechanics were going to take the End Loader out of service on the day of the incident in order to make the necessary repairs. However, no one advised the Foreman of the Gang or the Claimant.

The Union urges that the Claimant is a conscientious worker who was merely following instructions to jump start the End Loader. He proceeded to hook up the cables in the manner in which he had previously been instructed. Witnesses who testified that the Claimant was not wearing safety glasses during the episode are incorrect. The Claimant was wearing the glasses, but, the glasses were knocked off as he tried to jump down from the End Loader immediately before the explosion. Significantly, neither witness took notice of the Claimant until they heard the noise from the battery explosion.

If there is any guilt to be found in this case, it must be shared guilt. After all, the End Loader was in need of repair for over two weeks. If the mechanics had taken care of the problem promptly, it would not have been necessary to jump start the machine and the Claimant would not have been injured. Supervisors were also aware of the problem, but did not insist that the machine be repaired earlier.

Finally, the Organization contends the Claimant would never have been charged if he had not been injured. The actions of the Carrier in this regard are vindictive and unfair.

The Carrier argues that the Claimant should have followed the rules when he jump started the End Loader. If he had followed the rules, the accident would not have occurred. Instead, he admittedly did not check the fluid in the batteries, he did not take into account the voltage of the battery systems he was trying to connect (the truck and the End Loader) and, as a result, he did not separate the 24 volt system of the End Loader into two 12 volt systems before he attempted to jump start them with the truck, which had a 12 volt battery system. The testimony of eye witnesses also showed that the Claimant was not wearing safety glasses. For all of these reasons he is guilty of violating the cited rules and the suspension was justified.

DECISION

The Board has reviewed the findings in this case carefully. There is sufficient evidence the Claimant failed to perform the responsibilities required by the cited rules; he did not check

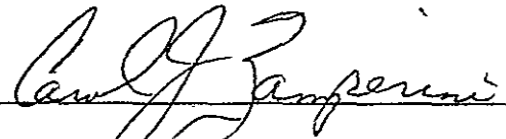
the battery fluids and did not appropriately consider the voltage of the battery system of the End Loader or the truck. If he did, he did not disconnect the four End Loader batteries into two 12 volt sets. Clearly, the Claimant bears at least partial responsibility for violating the applicable rules.

On the other hand, it is necessary to view the circumstances in their entirety. The End Loader had not been working properly for over two weeks. Workers, mechanics and supervisors alike recognized that the machine needed to be repaired. Furthermore, employees had found it necessary to jump start the machine continuously during the period it malfunctioned. In this regard, it was evident from the testimony, that it was usually the mechanics who were asked to jump start the machine. They apparently knew what they were doing. The Claimant, on the other hand, "believed" he knew what he was doing. Therein lies the difference. According to his Foreman, the Claimant was shown on one other occasion how to jump start the End Loader by using his truck. There was nothing to indicate he had been given further instructions. It is clear he thought he remembered how to make the proper connections, but, in reality did not. Considering the problems with the End Loader, it behooved supervisors to be sure each employee was thoroughly instructed on how to properly connect the charging system, if there was a chance s/he would use the machine. Testimony did indicate that more thorough instruction was provided after the fact. By then it was too late for the Claimant. Fortunately, his injuries were minor.

These circumstances and the Claimant's record, make a five (5) working day suspension harsh. The penalty should be reduced to reflect the Employee's years of service and his clean employment record.

AWARD

The five (5) working day suspension issued the Claimant is to be reduced to a two (2) working day suspension. The Claimant is to be reimbursed any wages and/or benefits lost for the three (3) days he was suspended in excess of a two (2) day suspension.


Carol J. Zamperini, Neutral

Submitted:

July 19, 1994
Denver, Colorado