

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 148
Award No. 148

Claimant: B. E. Guerrero

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 Claimant was notified by charge letter dated December 28, 1993, that he allegedly violated the below cited rules, when, on December 23, 1993, he poured hazardous material, namely, "Burke" concrete curing solution, into an open bucket which he loaded and unloaded onto a truck causing the solution to splash into his eyes. His actions purportedly violated Rule I and Rule 616, which read as follows:

Rule I. Employees must exercise care to prevent injury to themselves or others. They must be alert and attentive at all times when performing their duties and plan their work to avoid injury.

Rule 616. HAZARDOUS MATERIAL: Employees whose duties are in any way involved in the handling of hazardous materials must have a copy of instructions or regulations for handling hazardous materials, be conversant with and comply with such instructions or regulations.

The Claimant is a Bridge and Building Sub-department Welder. On the day of the incident he was working in this capacity at Tucson, Arizona. During the time, he was one of several crew members responsible for laying cement at a job site. After the cement was laid and smoothed, it was necessary to apply a curing material, namely, RES-X. The chemical was stored at the shop in a 55 gallon container with a spigot. In order to transport the solution to the job site, it was necessary to drain the required amount of the chemical into a separate container. Normally, a Hudson sprayer was used, not only to carry the chemical but to spray it onto the newly spread concrete.

According to this testimony, the Claimant did not use a Hudson Sprayer because he was aware that one of the two sprayers in the shop did not work, while the other was missing a nozzle. Instead, the Claimant used a five gallon uncovered plastic container. He extracted the needed amount of RES-X into the container and loaded it onto the pickup truck he was riding to the job site. Once at the job site, the Claimant assisted in pouring the cement and then realized the crew needed trowels to smooth the cement. This necessitated a trip back to the shop. Before taking the pickup truck to obtain the trowels, he decided to unload the RES-X from the back. He did this without lowering the tailgate of the truck. As a result, either the Claimant's hand or the bottom of the container hit the tailgate causing the chemical to splash out of the container and into the Claimant's eyes. His eyes were irritated and required medical attention, however, there was no permanent damage.

The Claimant was subsequently charged for violating the aforementioned rules.

The Union claims the Carrier cannot discipline the Claimant for mishandling the chemical when they themselves fail to store it properly or fail to provide the necessary equipment.

The Claimant himself had made them aware of the need for Hudson Sprayers and even went so far as to verify where they could be obtained. Besides the Carrier has been lax in providing the proper instructions on how to handle this material. Certainly if the Claimant is guilty so is his foreman and the Carrier.

On the contrary, counters the Carrier, employees know hazardous materials are to be carried only in closed containers. Besides those instructions are listed right on the containers in which the hazardous materials are shipped and stored. Even if, as the Claimant alleges, there was not a Hudson Sprayer available, there were brand new gas cans which could have been used to transport the chemical, while not perfect, these would have been better than the open container.

The Board in reviewing the facts surrounding this case, recognizes that the Claimant has been a very good employee. He has been employed since 1973 and has a clean employment record. On the day in question, it is unrefuted that he performed every task which was expected of him and wasted no time in expediting the laying of the concrete. By all evidence presented, it would appear the Claimant makes every attempt to be a leader on the work site.

However, on the day in question the Claimant, who should have known better, did not demonstrate good judgement. He did not take the necessary and obvious precautions in handling hazardous materials. In failing to do so, he not only jeopardized his own safety, but, in some respects, even more significant, he risked others being injured. Even though he knew there was a caustic solution in the open plastic container, this was not enough to prevent his own injury. Consider what might have happened to someone who did not know the contents of the container. One of these individuals could easily have unloaded the container from the truck and been subject to far more serious injury than experienced by the Claimant.

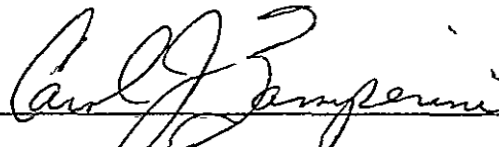
The Organization attempts to excuse the Claimant's behavior in part, through its contention that the Carrier is guilty of improperly storing hazardous materials. Even if that is the case, it does not serve to dismiss the Claimant's actions. There is no reason to believe the Carrier condoned carelessness or created an atmosphere which encouraged recklessness. Furthermore, this is not a case of management failing to properly

train employees. Hazardous materials and the proper handling of such, are continually subject to societal review. The general public is constantly made aware of the necessity to handle these materials with extreme caution. There is no excuse for employees who handle such materials in their work to be ignorant of the appropriate methods for transporting and/or using these chemicals.

For the reasons expressed herein, the Board believes the Claimant did violate the rules cited and the penalty issued was appropriate.

AWARD

The Claim is denied.

A handwritten signature in cursive script, reading "Carol J. Zamperini", written over a horizontal line.

Carol J. Zamperini, Neutral

Submitted:

July 17, 1994
Denver, Colorado