

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 149
Award No. 149

Claimant: M. R. Niccum

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 twenty-two (22) working days, and in addition disqualified him as Class 01 Track Foreman, 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 first hired by the Company as a Laborer. Recently, he was promoted to the Foreman's position. On the day of the incident which lead to his suspension, he was serving as the Foreman on Extra Gang 14 at Fernley, Nevada. At approximately 7:00 a.m. on May 4, 1994, the Claimant called the Roadmaster to obtain his work assignment for the day. He was

told to wait for a few minutes and to call back. When he reached the Roadmaster, he was asked if he had his job briefing for the day. When he responded in the affirmative, the Roadmaster asked him how that could be when he, as Roadmaster had not provided the instructions. At that point, the Claimant hung up on the Roadmaster. The Roadmaster telephoned the Claimant and advised him, "not to ever hang up the phone on me again and that he was . . . that I could write him up for being insubordinate." The Claimant then hung up the phone again.

The Roadmaster then called again and was told the Claimant had gone to the Company truck. The Supervisor then called the driver of the Company truck and asked him if the Claimant was with him. When the driver responded yes, he was told to drive directly to Sparks. At that point, the Claimant got out of the truck and into his own car and proceeded to Sparks.

When he arrived at Sparks, he went to the Roadmaster's office. He was told there was a possibility he would be pulled out of service for hanging up on the Supervisor and refusing to take instructions. The Claimant indicated that if the Supervisor wanted to fire him, he should go ahead and hold an investigation and fire him. He then slammed the door and left. He did not report to work that day, but did report to Fernley the next day where he called the Roadmaster and was told to remain there until the Supervisor arrived.

The Claimant was handed a charge letter and again asked why he hung up on the Roadmaster. He provided the same explanation he originally gave, namely, that the Supervisor "made him mad". He was asked to sign the letter and at first refused, however, he returned later and indicated he would sign. He was told he did not have to sign the letter. A day or two before the formal investigation, which was held on May 12, 1994, the Claimant called the Roadmaster and apologized for the incident.

The charge letter advised the Claimant that he was being removed from service pending the results of a formal investigation. It further set the date of hearing for May 12, 1994 in the conference car at 9499 Atkinson Street, Roseville, California. He was charged with violating Rule 607 of the General Rules and Instructions for the Maintenance of Way Structures and Engineering, dated March 1, 1990, particularly that portion which reads:

Rule 607. CONDUCT: Employees must not be: . . .

3. Insubordinate

and Rule 1.2.3.1 of the Chief Engineers Instructions for the Maintenance of Way and Structures and Engineering, December 1, 1990, which reads:

1.2.3 TRACK FOREMEN

1.2.3.1 Foremen report to and receive instructions from the Roadmaster (or Assistant Roadmaster) and/or Track Supervisors. . .

Following the hearing the Carrier considered the evidence and decided the Claimant was guilty of violating the aforementioned rules. He was suspended for a period of thirty (30) days commencing May 4, 1994 through June 2, 1994.

The Organization contends the Claimant is not guilty of insubordination because the instructions were not clear and the employee was not given time to comply. Even the Supervisor does not claim he was giving the Claimant any instructions. Their discussions centered around the Rule of the Day and the job briefing. The Carrier has failed to show that the Claimant was given any instructions with which he failed to comply. Nor has the Carrier demonstrated any need for pulling the Claimant out of service without the benefit of an investigation. There is no evidence he would have jeopardized Company equipment or personnel. The Organization does not believe the Claimant's actions warrant any discipline.

The Carrier argues that the Claimant refused to receive instructions and was guilty of insubordination because of his refusal to listen to the verbal instructions of his Supervisor. Furthermore, the Claimant hung up on the Supervisor after being told not to do it again.

The Board has reviewed the testimony from the investigation, the actions of the Carrier and the Claimant's employment record. It is the opinion of this Board that the Claimant demonstrated an unwillingness to accept either criticism or instructions from the Roadmaster. He was guilty of insubordination. This Board has been consistent in not allowing disqualifications to be used as disciplinary actions. However, in this case, as in one or two others, it is the Board's belief that the Claimant has displayed behavior which clearly shows he has not yet developed the skills necessary to perform the tasks of the promoted position. Not only must Foremen be prepared to receive and follow instructions, but they must be responsible enough to set an example their crew can follow. It would be difficult for the Claimant to expect his

Gang to receive and follow his instructions when he has shown on

more than one occasion a reluctance to accept or follow the instructions of his Supervisor. For those reasons, the Board believes the Carrier was correct in disqualifying the Claimant as Track Foreman.

AWARD

The Claim is denied.

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

Carol J. Zamperini, Neutral

Submitted:

September 22, 1994
Denver, Colorado