

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 157
Award No. 157

Claimant: J. Zavala

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE Southern Pacific Transportation Company

STATEMENT
OF CLAIM

1. That the Carrier's decision to assess Claimant a five (5) working day suspension without pay 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 Carrier directed the Claimant by letter dated September 15, 1994, to be present at the Office of the Assistant Division Engineer, 9499 Atkinson Street, Roseville, CA at 9:00 a.m., Wednesday, September 28, 1994 for a formal Investigation. The purpose of the hearing was to determine his responsibility, if any, for his alleged failure to supervise an employee under his jurisdiction who was injured while working. His actions, if proven, were violations of the following rules, those portions reading:

RULE 71.2.3.3: TRACK FOREMEN

Foremen must see that employees under them properly and safely perform their duties, and will assist in work of their gangs. They must keep the records and make the prescribed reports of the time of their men, and of the receipt, distribution and (sic) use of materials furnished them.

RULE 1.1: SAFETY

Safety is the most important element in performing duties. Obeying the rules is essential to job safety and continued employment.

It is the responsibility of every employee to exercise care to avoid injury to themselves or others. Working safely is a condition of employment with the Company. The Company will not permit any employee to take any unnecessary risk in the performance of duty.

No job is so important, no service so urgent, that we cannot take the time to perform all work safely.

Once the Carrier reviewed the evidence adduced at hearing, they contacted the Employee by letter dated October 27, 1994. The letter advised the Claimant that the evidence supported a finding that he had violated the cited rules. He was suspended from service for a period of five (5) days, effective 12:01 a.m., October 31, 1994 through 11:59 p.m., November 4, 1994.

The Organization filed the present claim on behalf of the Claimant. They urge that the Claimant has been employed with the Carrier for thirty-four years, twenty-nine years as a Foreman. He is well versed and conscientious in the performance of his job. The accident was an unfortunate event, but, the Foremen in charge had held their briefings, as required. He handled his assignment in accordance with all Carrier rules, including assuring the prescribed use of protective equipment. The operator was given instructions and performed his job in line with those instructions. The Carrier has not met its burden of proof in this case. The charges against the Claimant should be dropped.

The Carrier believes the Claimant failed to supervise the a member of his crew. As a result of this lack of supervision, the employee was injured. As pointed out by Rule 1.1 "Working safely is a condition of employment with the Company. The Company will not permit any employee to take any unnecessary risk in the performance of duty."

The evidence supported the Carrier's actions. The Claimant violated the cited rules. The penalty issued was appropriate. The claim should be denied.

On the day of the accident, the Claimant was the Foreman of Extra Gang #5. He went on duty at 7:00 a.m. and went off duty at 3:30 p.m.. He and his gang were responsible for installing a pair of joint angle bars at the west end of Antelope, track #2, 102. Instead he and his gang assisted in moving a switch point back. They had to cut the rail to shorten the closure rail. When they sawed a section of the rail in order to remove it, the rail section buckled and pinched the saw. It then kicked back and cut the operator on the shoulder.

Immediately following the accident the injured employee told his Supervisor that while he operated the saw, he held the middle handle of the saw and the throttle, instead of the forward handle and the throttle. He should have known this was incorrect, especially since he had previously received instructions on how to safely operate the saw. Despite the fact, the injured employee and others testified at hearing that he held the saw correctly on the day of the accident, it is probable he did not. In reality an employee's initial recollections are more reliable than explanations offered at a later time. Often times circumstances and consequences cause individuals to remember things differently. The Board believes this is what happened in this case.

In all probability the Claimant was busy doing other things and failed to observe the employee. Since it was his responsibility to assure that his crew members performed their work in a safe manner, he should be held accountable for failing to direct the employee to operate the saw correctly. Furthermore, even though he has a lengthy tenure and a relatively good record, there is some evidence contained therein, which indicates he has skirted safety rules on occasion. Therefore, the penalty, as issued, does seem appropriate considering all the evidence.

AWARD

Claim denied.

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

Carol J. Zamperini, Neutral

Submitted:

April 2, 1995
Denver, Colorado