

SPECIAL ADJUSTMENT BOARD NO. 947

Award No. 16
Case No. 16
John W. Peterson, Jr.

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Southern Pacific Transportation Company
(Western Lines)

STATEMENT
OF CLAIM

1. That the Carrier's decision to suspend Claimant for a period of sixty-eight (68) days from August 8, 1984 through October 14, 1984 was unduly harsh, in abuse of discretion and in violation of the current Agreement.
2. That because the Carrier failed to prove the charges by introducing substantial evidence that it now be required to compensate Claimant for all wage loss suffered and remove all charges from his record.

FINDINGS

Upon reviewing the record, as submitted, I find that the Parties herein are Carrier and Employee 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.

A formal hearing was conducted by D. P. Capovilla on the above matter on August 28, 1984. Following the hearing, Mr. Peterson received a letter which upheld charges he violated Rules M818 and M871 of the Rules and Regulations for the Maintenance of Way and Structures. The charges were in connection with a fatality which occurred at Grass Lake on August 8, 1984. On that day Mr. Peterson was the Foreman in charge of Extra Gang #64. At approximately 2:05 p.m. Ballast Tamper Operator, J. Ceballos, was fatally injured when he walked into the path of an oncoming train. At the time, Extra Gang #64 was making repairs to the siding around MP 369.1.

The Foreman, Mr. Peterson, had not arranged for a lookout during the day in question. Nor had he obtained advanced information as to when particular trains would be using the tracks in the area. Since he had no additional laborers to serve as a lookout, the Foreman would have had to post himself as a lookout instead of assisting his men in getting the work completed. As it was, the Gang was going to have to work overtime to complete their duties. A situation which was unpopular with at least one of the men. I am certain, this placed an added burden on Mr. Peterson. In an effort to expedite the work, he chose to operate the Liner. Although it cannot be determined with certainty, the absence of a lookout may have contributed to the accident. At any rate, Mr. Peterson did not follow the letter of the Rule. He was to

post a lookout and failed to do so. If necessary, he was to fill that position himself. If in so doing, he was admonished by his Supervisor, he could justifiably have grieved. Unfortunately, under those circumstances, the work would have been completed when it was completed.

Mr. Peterson was employed by Southern Pacific Transportation Company in June, 1971. To his credit he advanced quickly, becoming a Student Foreman less than a year later. In May, 1974, he became an Extra Gang Foreman. He has a fine record with the Company. He was disciplined once during his tenure. In 1981, he was issued 45 demerits for being absent without authority. At the time of this accident his record was clear. His record does show he was displaced as Foreman in 1975 for three months, but there is nothing to indicate it was disciplinary. At the hearing there was testimony that Mr. Peterson had not always turned in Safety Meeting Reports, but this apparently was not viewed as a serious infraction since there was no acceleration of discipline over this issue and nothing noted on his personnel record. Therefore, the question is whether or not a 68-day suspension was appropriate in light of the Grievant's past record.

Obviously the violation of a Rule becomes intensified when there is a fatality. Just as the penalty for running a red light is a minimal fine unless it results in an accident. Unfortunately accidents cannot be reversed regardless of what

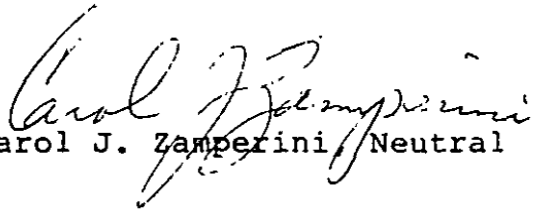
is done afterwards. If Mr. Peterson had previously been disciplined for not using a lookout, there would be no question the 68-day suspension or even a greater penalty would be justifiable. However, in light of the Employee's tenure with the Company and his relatively discipline-free record, a 68-day suspension is too severe.

AWARD

The 68-day suspension issued to the Grievant is to be reduced to a 35-day suspension effective 8-8-84. The Grievant is to be reimbursed for any wages and benefits lost as a result of the days suspended in excess of 35 days.

ORDER

The Carrier shall comply with the above Award within thirty (30) days from the date submitted.


Carol J. Zamperini, Neutral

Submitted:

June 19, 1985
Denver, Colorado