

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 161
Award No. 161

Claimant: L. S. Howard

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 three (3) working day suspension without pay 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 directed the Claimant by letter dated October 24, 1994, to attend a formal hearing at the Roadmaster's Office, 1585 Oak Street, Klamath Falls, Oregon, at 9:00 a.m., Tuesday, November 1, 1994. The purpose of the Investigation was to determine whether the Claimant, a Welder's Helper had violated the following Rules while he and co-workers were replacing a rail at MP 434.2 on the Modoc Line on October 13, 1994, by allegedly positioning himself in such a way that he was struck by the rail--causing a fracture to his right foot:

Rule 1.1 Safety

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

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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 an 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.

Rule 1.1.1 Maintaining a Safe Course

In case of doubt or uncertainty, take the safe course.

Rule 1.1.2 Alert and Attentive

Employees must be careful to prevent injuring themselves or others. They must be alert and attentive when performing their duties and plan their work to avoid injury.

The Carrier reviewed the evidence adduced at hearing and determined the Claimant was guilty of the charges. He was suspended from service for three (3) working days commencing 12:01 a.m., Monday, January 16, 1995, through 11:59 p.m., Wednesday, January 18, 1995.

There were two crews working together following a Rail Detector. They were responsible for removing and replacing defective rails. They had been working together for about one week and had replaced at least ten rails.

The Organization points out that the two Crews worked successfully together for the week. Each man knew his job and demonstrated safe work practices. The incident which happened on the day in question, from the Organization's perspective, can be blamed on an odd-ball truck. The control levers on the particular boom truck used that day were reversed from the levers on all other Company Boom Trucks. In addition, the Organization argues that the Carrier failed to provide adequate training to employees who operated the different Boom Trucks.

Furthermore, the rail had already been placed when the Claimant moved into the inside of the track to get to the other end of the rail. He had waited until he believed it was safe. As far as he was concerned, he was following the same procedure he had followed during the preceding week. No one thought the rail was going to be moved out of the plates. The move was

16/ totally unexpected and probably resulted from confusion over which lever was the correct one to pull.

The Organization further urges that the Claimant's Foreman had informed his Roadmaster about the problems with the reversed controls, but nothing was done to correct the problem.

The Carrier argues the Claimant should have been aware that he was placing himself in an unsafe position. After all, the rail had not been put into its exact position. It was his responsibility to be certain everything was stabilized before he put himself into a position where this type of accident could happen.

Admittedly, the Claimant should have been more alert when he moved to the inside of the track. He should certainly receive some direction along these lines. However, in reviewing the evidence presented at hearing, the Board finds the arguments raised by the Organization concerning the operating controls of the Boom Truck to be particularly persuasive. Since the controls on the truck were reversed, it is plausible that the Operator could have inadvertently pulled the wrong lever which resulted in the rail swinging inward rather than sliding toward the Foreman. In this scenario, it is understandable that the Claimant, from his position, believed the rail had been stabilized and was prepared to do the job in the manner he had during the preceding week.

Furthermore, there were at least two Foremen working to position the rail who should have realized the rail was not completely stabilized. They had a responsibility to direct employees to stay clear until this occurred. The Claimant should not be held to have greater responsibility than the Foremen in this accident. In addition, the Claimant indicated he had nothing negative in his record. Since there was nothing presented which would prove otherwise, the Board considers his record mitigating. Accordingly, the penalty issued was excessive and unjust.

AWARD

The penalty is to be reduced to a Letter of Instruction which will be included in the Claimant's Personal Record. He is to be reimbursed all wages and benefits lost as a result of his three (3) working day suspension.

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

Carol J. Zamperini, Neutral

Submitted:

July 10, 1995
Denver, Colorado ..