

SPECIAL ADJUSTMENT BOARD NO. 947

Award No. 17
Case No. 17
Ahmed A. Nasser

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

1. That the Carrier's decision to suspend Claimant for a period of sixty (60) days from August 23, 1984 through October 21, 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 Employes 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 has been employed by the Company for a little over 14 years. He was a track laborer for 12.5 years. On

August 12, 1983 he was promoted to Foreman. At the time of the incident which precipitated this arbitration, he was the Foreman of Extra Gang #58. The Employee was on personal leave of absence from September, 1972 through December, 1972. His personnel record appears to be incomplete, however, there is no indication the employee has received any type of discipline during his tenure with the Company.

On August 22, 1984, the Grievant and Gang #58 were asked to dump riprap in the vicinity of M.P. 21.5. After receiving some instructions from Mr. R. V. Hernandez, Regional Maintenance of Way Manager, as to how he wished the air dumps to be unloaded, the crew proceeded to do their jobs. The Foreman directed the Gang to dump the car farthest from the engine first and proceed toward the front. They had difficulty with the end car, therefore, they dumped the car second from the last. As they did the riprap backed up against the car and caused a derailment. Mr. Nasser was sent a charge letter dated, August 24, 1984, in which he was cited for the violation of Rules 801, MB, and M530. After a formal hearing held on September 14 and September 24, 1984, the charges against the Grievant were upheld and he was suspended for sixty (60) calendar days without compensation.

There are two disputes relative to this case. One, did Mr. Hernandez provide instructions to the Gang on how to unload the air dumps? The second, was the Grievant offered a waiver

of 30 demerits. Although there is conflicting testimony on the first question, it appears Mr. Hernandez, while not precisely demonstrating how he wanted the cars unloaded, did indicate to Mr. Nasser he wanted them unloaded from the front end. This is supported by the testimony of the Grievant who stated, "I ask him will you please show us how you want it done, because we have been dumping them from the back end all this time and we have no knowledge how you want them done. Mr. Hernandez said no, it is your job you do it, so I just continued to dump it the way I know to dump it on August 16. . ." If Mr. Hernandez had not asked the Gang to unload them from the front end, why would Mr. Nasser have felt a need to ask such a question and make such a decision. Clearly, Mr. Nasser chose to do it his way after feeling Mr. Hernandez refused to demonstrate exactly how he wanted it done. The answer to the second question is not as easy. It appears the waiver may have been suggested as a possible solution by Mr. Arroyo. However, it does not appear it was a direct offer from Management. Instead, Mr. Arroyo seemed to have suggested Mr. Nasser attempt to alleviate his problem by presenting such a waiver to Mr. Hall.

There is no proof the derailment occurred because the cars were unloaded from the back end instead of the front, nevertheless, Mr. Nasser's actions were contrary to Mr. Hernandez's orders. In view of the fact Management had never directed him to unload the cars front to back in the previous

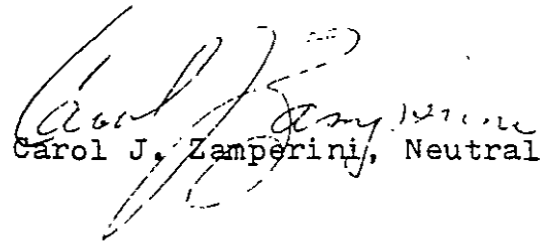
seven months, there is a good chance Mr. Nasser saw no reason for the change. Regardless, he should have followed the directive. Insubordination is a serious offense. Obviously, the derailment was an accident. There is no way to infer Mr. Nasser in any way anticipated the accident or willfully was abusive of Company property. Additionally, there is nothing to indicate the Grievant was careless of the safety of others. I believe he had unloaded air pumps in the same manner in the past. It would appear there was never an incident. The Grievant deserves significant discipline for ignoring Mr. Hernandez's instructions. However, since Mr. Nasser has worked for the Company for over fourteen years and since he has a clear record, the 60 day suspension for what is apparently his first offense is too severe.

AWARD

The sixty (60) calendar day suspension issued to Mr. Nasser is to be reduced to a thirty (30) calendar day suspension. He is to be reimbursed for any wage loss difference between the sixty (60) calendar day suspension and the thirty (30) calendar day suspension.

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