

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 171

Award No. 171

Claimant: S. M. Ramirez

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Southern Pacific Lines

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.

A charge letter dated September 7, 1995, directed the Claimant to attend a formal Investigation at the Office of the Division Engineer in Bloomington, CA on September 26, 1995. The hearing was to determine whether or not, on August 25, 1995, he attempted to manually remove an MC-3 Grinder from a track in the West Colton Yard contrary to his supervisor's directive to only move the grinder with the Boom truck. His alleged failure to follow instructions resulted in injury to both him and his co-worker.

The charge letter further advised the Claimant that his actions may have been in violation of the Carrier's Safety Rules, citing in particular:

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 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.

Rule 1.6 Conduct, that part reading:

Employees must not be:

1. Careless of the safety of themselves or others.
2. Negligent

Any act of . . . willful disregard or negligence affecting the interests of the Company or its employees is sufficient cause for dismissal. . .

When the charge letter and two subsequent letters postponing the hearing were not received by the Claimant, the Carrier continued the hearing to November 1, 1995.

Following the hearing, the Carrier reviewed the evidence and determined the two crew members were guilty of the charges. Each man was suspended for five (5) days.

The incident which resulted in the charges occurred on August 25, 1995. Three days earlier, on August 22, 1995, the Claimant, a Welder and his co-worker, a Grinder Operator, were directed to report to the West Colton Yard to grind the stock rail switch and frogs. To accomplish the assignment, they were to use a Switch Binder Model MC-3 which weighed about 175 pounds. The grinder was transported to the work site by pickup truck and unloaded with the crew's Boom Truck.

The two men worked in the yard until the day of the incident. On that day, as they were working on the track, they heard a train approaching. They determined it was necessary to remove the Grinder from the track in order to let the train pass unimpeded. When the Boom Truck failed to operate, they moved the Grinder off the track by hand. In doing so, the men slipped. The Claimant injured his lower back. The co-worker, in addition to injuring his back, broke his right wrist.

The matter was investigated the same day and the two crew members were taken to the doctor.

The Organization, on behalf of the Claimant, contends the Carrier has failed to meet its burden of proof. They also point out that no one can be blamed for equipment failure and there was no doubt that the Boom Truck for some unknown reason failed to operate when the two men attempted to clear the Grinder from the track.

Furthermore, they point out that the crew had never worked in the West Colton Yards and fully believed they were responsible for removing the Grinder from the track when a train approached. They did not believe trains would stop and seek their permission before proceeding across the switch and out of the yard. When the Boom Truck failed, he saw no alternative than to manually remove the Grinder.

Finally, the Organization lauds the Claimant's lengthy and good service record. Even if the Claimant in this case made some errors, they suggest that a mere slap on the wrist is all that is necessary.

The Carrier argues that the Claimant's supervisor, on several occasions, made it clear the Boom Truck was to be used any time the Grinder had to be moved. Furthermore, the crew had personally cleared track and time within the West Colton Yard in order to complete their assigned work. They should have been aware that trains would stop short of their work site and seek permission from them before proceeding. In any case, when the crew realized the Boom Truck was not working, they could have flagged the train if they did not believe it would have stopped on its own.

The Board has reviewed the case carefully. The Board does not believe the Claimant's decision to ignore the supervisor's directive was premeditated. However, it is clear he did fail to comply with a clear directive not to attempt to move the Grinder by manually. Furthermore, as pointed out at hearing and is evident from the Claimant's employment record, he has been employed with the Carrier for over 17 years. It is hard for this Board to believe he would not have known that once he obtained track and time to work on the switch within West Colton Yard,

trains would defer to his direction. Besides, the Carrier correctly asserts that if the Claimant truly believed the train would automatically proceed through the switch, he had the prerogative to red flag the train when he determined the Boom Truck was not operating.

Finally, the Board in reviewing the transcript, does not believe the Claimant was as forthcoming as he should have been. There were several inconsistencies in his testimony. In contrast, the testimony of the supervisor was credible.

For all of these reasons, this Board believes the Carrier has met its burden of proof and the penalty issued was appropriate.

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:

March 28, 1996
Denver, Colorado