

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 173
Award No. 173

Claimant: D. M. Fullmer

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE Southern Pacific Lines

STATEMENT
OF CLAIM

1. That the Carrier's decision to assess Claimant a one (1) 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 Claimant was a Motor Grader Operator in the Track-Sub Department. He had over 28 years of service on February 16, 1996. On that day he was assigned to assist in laying rail across the I Street Bridge at Sacramento, California. At one point, in order to move the 78' rail, he had to attach tongs to a spreader bar. As he attempted to place the bolt through the clevis to hold the two together, the spreader bar apparently moved and he pinched his finger.

As a result of the injury, the Claimant received a charge letter dated February 21, 1996. The charge letter advised the Claimant to attend an Investigation on February 29, 1996 to determine if he had violated the following Rules of the Safety and General Rules For All Employees, effective April 10, 1994:

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 23.2 Protection of Body Parts

Do not place your hands, fingers, . . . in a position where they might be caught, pinched or crushed. . .

After the hearing the Carrier reviewed the transcript and issued the Claimant a one (1) day suspension without pay. The matter was appealed by the Organization on behalf of the Claimant.

Certainly a one (1) day suspension without pay is not unreasonable discipline for an employee who works in an unsafe manner. This would be true even in the case of the Claimant who has over 28 years of very good service to the Carrier, a fact obviously considered by the Carrier in assessing the penalty. However, in reviewing the record in this case, the Board is simply not convinced the Carrier met its burden of demonstrating that the Claimant failed to work in an unsafe manner. Nothing in the record proved that it was the Claimant who failed to do something which would have prevented his accident. In fact, the Carrier witness did say that when the Claimant kicked the spreader he was performing his work safely. The record does contain some alternatives for handling the tongs and the spreader bar from that point forward, but, there is nothing concrete to demonstrate how the Claimant erred in his handling of the equipment. Absent such a showing, the Board cannot uphold the discipline issued the Claimant.

AWARD

The claim is sustained.

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

Carol J. Zamperini, Neutral

Submitted:

May 21, 1996
Denver, Colorado