

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 174
Award No. 174

Claimant: K. A. Jenkins

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.

The Claimant, a Track Foreman, was operating Boom Truck 7800-9027E on December 17, 1995, at Carson Street crossing in Dolores, California. Around 5:30 p.m., he attempted to drive his truck between a barricade and a pole at Carson Street crossing at Dolores, California. Either because the opening was too narrow or because his back wheels slid, the truck hit the pole and caused \$2500.00 worth of damage to the front of the truck.

On January 4, 1996, the Claimant received a charge letter outlining the incident and advising him to be present for a formal investigation to be held at the Office of the Division Engineer in Bloomington, California. The Claimant was charged with the possible violation of the following Rules of the southern Pacific Lines Safety and General Rules for All Employees:

Rule 1.6 Conduct:

Employees must not be:

1. Careless of the safety of themselves or others

Rule 72.12 Automotive Equipment

(f) No motor vehicle is to be set in motion until it is known that the way is clear. Care must be exercised in parking and driving, either on or off the right of way, to avoid damage to equipment or injury to occupants due to conditions of route traveled on account of presence of concealed obstructions or holes, and movement must not be made until investigation indicates that the route is safe. It must be known that vehicle will clear all overhead restrictions before passing under same.

There can be no doubt the Claimant intentionally drove his truck through a relatively narrow opening when he had a definite alternative route. The fact the Claimant may have driven through that same opening 25 times before without incidence does not negate the risk involved in the move. The Carrier has proved to the satisfaction of this Board that the Claimant failed to give adequate consideration to what he was doing. His relatively short tenure with the Carrier cannot be considered mitigating. The penalty is not excessive under the circumstances and certainly fits the crime.

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:

May 23, 1996
Denver, Colorado