

SPECIAL ADJUSTMENT BOARD NO. 947

Award No. 18
Case No. 18
Manuel R. Sanchez

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

1. That the Carrier's decision to assess Claimant's personal record forty-five (45) demerits 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 Claimant now be exonerated of the charges against him, and the demerits placed on his record now be expunged therefrom.

FINDINGS

Upon reviewing the record, as submitted, I find that the Parties herein are Carrier and Employee 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 Grievant has been an Employee with the Company since 1977. During that period, he has a good record with the Company. On only one occasion was he even reminded about rules and that involved Rule M - personal injury/carelessness. There is little doubt he is a good employee.

On July 6, 1984, he and another employee, Mr. J. Espana, were absent from their post from 9:30 p.m. until the end of their shift, which was 12:30 a.m.. The testimony at the formal hearing held on July 24, 1984 revealed that the two employees had taken their lunch break at their regular time, 9:00 p.m. and had driven to see Mr. Espana's sister. According to the Employees, they were on their way back to work at about 9:25 p.m, when the truck developed a flat tire. Mr. Espana had no spare tire and had to take the flat to be fixed. Fearing vandalism, he asked the Grievant to stay with the truck and he would call the Supervisor and report the two of them were together and had experienced a flat tire. Mr. Espana did call in and Mr. Mutz the Foreman did receive that message.

The two men were scheduled to work overtime the evening of July 6, 1984. For whatever reason they did not make it back to work between the time they had a flat tire around 9:25 p.m. and 2:30 a.m.. They both indicated they tried to call the Foreman, but no one answered the phone. According to the

testimony of the two Employees, Mr. Sanchez and the truck remained at the spot the flat occurred. Once the tire was fixed, there was nothing which prevented the two employees from driving the 6-8 miles back to their work site. This is especially true in light of the fact they could not get through on the telephone. Even if it took two to three hours to repair the tire, they still could have returned the few miles to their work site. They had an obligation to do so. They were responsible to know the length of their shift.

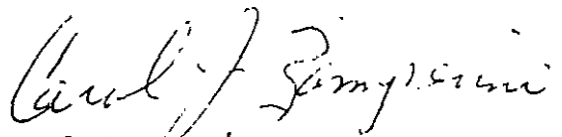
Although progressive discipline normally begins with a warning, I do not believe the Employees had to be forewarned it was a Rule violation to be absent without authority. Both Employees stated they made no attempt to return to work after the tire was fixed even though they were only a short distance from the site. In this case, I do not believe the 45 demerits was too severe.

AWARD

The Grievance is denied.

SBA-947

Award No. 18


Carol J. Zamperini, Neutral

Submitted:

June 19, 1985
Denver, Colorado