

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 180
Award No. 180

Claimant: R. Murillo

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 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.

By letter dated April 8, 1996, the Claimant was advised that he was to attend a formal hearing to determine whether he was responsible for violating Rule 1.1.2 and 1.1 of the Safety and General Rules For All Employees, effective April 10, 1994, which read:

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 1.1 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.

The hearing was originally scheduled for April 22, 1996, but was postponed until April 29, 1996, at the request of the Claimant. The Claimant was not suspended prior to hearing and no waiver was offered.

Following the hearing, the Carrier ruled that the evidence supported the charges against the Claimant and he was suspended for five (5) working days.

On the day of the accident, March 25, 1996, the Claimant was assigned to repair a switch located in the yards at Redding, California. He went on duty at 7:00 a.m. and went off duty at 3:30 p.m. According to testimony, the Roadmaster was notified around 1:30 p.m. that Extra Gang 7 requested that he stop by their work area. When he arrived, he was told that the Claimant had scrapped his leg when his foot slipped off the foot step of the gang truck as he was climbing inside. The Roadmaster and the Claimant discussed the injury and decided the injury would probably improve in a couple of days. They decided to let it go for a few days.

During an examination of the truck, the Roadmaster found no apparent defects that would explain the Claimant's accident. However, witnesses for the Claimant testified that the step of the gang truck was very narrow and was bent upward. Furthermore, while the asphalt in the parking area was worn asphalt, there were no major potholes or mudholes which would have accounted for the Claimant's accident.

On April 1, 1996, the Claimant went in to see the Roadmaster and said at the time he thought his leg should be checked. It was still sore. When he filled out the 2611, he was asked to take a urinalysis, which was apparently negative. He visited the doctor and was told to take time off work. It was following these events that the Claimant was charged with the Safety Rules violations.

POSITION OF THE PARTIES

The Union argues that the Claimant has performed his work attentively and safely for some 25 years. The Organization further points out that the Claimant testified that he was startled on the day of the accident and missed the step, injuring his leg. They add that the step was bent and narrow and easily missed when someone is startled at the time they try to get into the truck.

The Carrier argues that the evidence adduced at hearing demonstrates that the Claimant was inattentive while entering the gang truck. As a result, he missed the step and injured himself. The injury was not reportable until the Claimant confirmed his injury by asking to file a 2611 and have the leg looked at medically.

DECISION

The Claimant testified that he did not slip off the step when he tried to enter the truck. Instead he missed the step completely. This goes a long way in supporting the Carrier's contention that the Claimant was inattentive at the time he entered the gang truck. However, this Board finds fault with the Carrier's handling of this matter. If the Claimant was guilty of the charges a week after the occurrence, he was guilty of the charges on the day of the accident. Furthermore, if the Carrier contemplated issuing him a letter of reprimand before he asked to see the doctor, that is the penalty he should have been issued subsequently. He was no more guilty of the safety violation one week after the accident than he was on the day of the accident. For that reason, the Board directs that the penalty be reduced.

AWARD

The five (5) day suspension is to be reduced to a letter of reprimand. The Claimant is to be reimbursed all wages and benefits lost as a result of the suspension.

The Carrier is to comply with this Award within thirty (30) days of receipt of same.



Carol J. Zamperini, Neutral

Submitted this 30th of August, 1996.
Denver, Colorado