

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 183

Award No. 183

Claimant: M. Matthews, Jr.

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 charges against the Claimant stemmed from a supervisor reporting that the Claimant was allegedly riding on top of a gondola loaded with ties while the train was in motion. The Carrier held a formal Investigation to determine the Claimant's responsibility for this charge. After reviewing the evidence produced at the hearing, the Carrier decided that the Claimant had violated the following rules:

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.

1.6 Conduct

Employees must not be:

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

1.54 Riding on Car or Engine

When required to ride equipment do not:

Ride inside or between the end of a car with shiftable loads.

71.1.25 Employees are not permitted to ride on cars or locomotives unless specific duties require it.

71.7.7 Foreman and others in charge of work are responsible for the safety of their men and must see that no unnecessary risks are taken. They shall bear in mind that safety is the first and most important consideration.

Employees must do all possible to prevent accidents even though in so doing they may necessarily perform the duties of others. In case of doubt, the safe course must be taken.

The Claimant was first employed by the Carrier in 1978. At the time of the charges, he was a Track Foreman on Extra Gang 6. He had been a Foreman for nearly six years, but only for 5 months on Extra Gang 6. On the day in question, he went on duty at 7:00 a.m. and off duty at approximately 3:30 p.m. The work train he was working on was delivering and unloading ties on the number 1 track between the east switch at Caliente and the west switch at Limon. At some point, the Roadmaster observed the Claimant riding on the gondola which was loaded with ties. He, along with others, stopped the work train and asked the Claimant why he was riding in the gondola. The Claimant explained that he had been looking for a broken hose when the train began moving unexpectedly. The supervisor testified that the Claimant could not explain why he did not stop the train at the time, especially since he was allegedly only twenty (20) feet from the Brakeman who had a radio.

POSITION OF THE PARTIES

The Organization claims the Claimant was not in charge of the train. When he got on top of the gondola, he was looking for a broken hose. The Organization believes the Foreman in charge of the work train should have made sure everyone was off the train before he ordered the train to move. They argue, that after the train started moving, the Claimant had to expend his efforts finding a safe place on the loaded car to brace himself.

The Carrier argues that the Claimant should not have put himself in the position of getting caught on the gondola. They claim he had time to dismount the car before it started to move. In any case, the Carrier asserts that the Claimant could have contacted the Brakeman and asked him to stop the train since he had a radio.

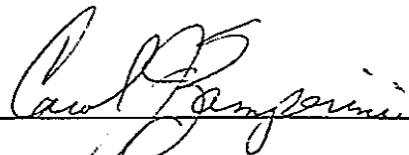
DECISION

Unrefuted testimony, supports the Claimant's contention that he climbed on top of the loaded gondola to assist in finding and repairing a leaking hose. All indications are that he did this while the work train was stationary. Further testimony indicates the work train began to move at the direction of the Foreman in charge. It is not certain that once the order to move the train was issued there was sufficient time for the Claimant to climb down off the gondola, especially considering the fact it was loaded with ties. However, testimony does reveal that the Claimant made no attempt to stop the train once it started to move. Although the Board appreciates the fact he was in a vulnerable position, he still should have made some attempt to get the Brakeman to contact the engineer or he should have tried to motion to someone himself. After all, the supervisors had no difficulty getting the train to stop once they noticed the Claimant on top of the Gondola. The other thing the Claimant should have done was to advise the Foreman of the work train that he was going to board the gondola to look for the leak.

In view of these facts, the Board is convinced that the Claimant bears most of the responsibility in this matter. Even though, the Board believes the Foreman in charge of the work train should have been more aware of where his workers were before giving the order to move, the Board does not believe the penalty issued was unreasonable in view of the Claimant's previous safety and overall employment record, as well as, the seriousness of the offense in this case.

AWARD

The claim is denied.



Carol J. Zamperini, Neutral

Submitted this 20th of December, 1996.
Denver, Colorado