

Case No. 186
Award No. 186

Claimant: E. L. Jackson

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 fifteen (15) calendar 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.

On July 18, 1996, the Claimant was notified to attend a formal Investigation on Thursday, July 25, 1996. The purpose of the hearing was to determine if he had failed to secure the spike gun and roller-gauger assembly when he was operating spike-gauger #522 on July 16, 1996. As the two-man crew moved the spike-gauger over the track, the assembly hit in several places. When they tried to move the machine backwards, the assembly lodged against the tracks and the spike-gauger derailed. The Carrier charged that the Claimant violated the following rules:

1.6 Conduct

Employees must not be:

2. Negligent

Any act of . . . negligence affecting the interests of the Company. . . is sufficient cause for dismissal. . . .

17.5 (M) MOVEMENT OF ROADWAY MACHINES AND WORK EQUIPMENT

3. All safety devices, such as pins or locks must be in place.

After the Investigation, the Carrier reviewed the transcript of the hearing and determined that the Claimant violated the cited rules. He was suspended for 15 calendar days without pay. He was not offered a waiver for this incident.

The Claimant was a spiker operator for the Carrier. He was first employed in 1978. However, his tenure with the Carrier was disrupted when he was dismissed in 1987 and 1989 for a Rule G violation and for violating his conditional reinstatement respectively. He was unemployed approximately four months total during his employment with the Carrier.

The spiker machine operated by the Claimant, is used to secure the plates onto newly installed rail. Two parts of the machine, the spiker and the roller-gauger, must be secured when the machine is traversing track for any distance and not actually in operation.

On the day in question, the Claimant, along with one other employee, were operating a spiker machine. As the two men were proceeding toward the work site, they kept hearing noises. At one point, they stopped and put the machine into reverse. As they backed up, the machine derailed. It was subsequently determined that the assembly had caught on the rails and caused the derailment.

During the investigation, the Supervisor noticed nicks on the joints which indicated the assembly on the Claimant's side had not been secured as required. Therefore, the parts dragged across the rail as the machine was driven toward the work area. When questioned as to why he had not secured the parts, the Claimant responded that he thought they were commencing work in the immediate area. In reality, the work site was about six miles away. At the hearing, however, the Claimant admitted that he forgot to place the pin in the assembly to hold it in place. Since the employee on the other side of the machine had secured the assembly on his side, the Claimant was the only one charged.

POSITION OF THE PARTIES

The Organization claims the Carrier's actions were harsh. After all the only part of the machine damaged was the safety roller. The machine was still operable after the accident. The punishment was not warranted under the circumstances. Instead the incident should be used as a training session. They further argue that the Claimant is an excellent operator and should not

be punished financially for this one mistake. Furthermore, the Claimant, they say, was very remorseful. They point out that this was the first accident since his reinstatement in 1989, six years earlier. They point to the fact the Claimant was honest and forthright which in today's day and age should be mitigating factors. They urge that the fifteen day suspension be reduced in recognition of the Employee's cooperation.

The Carrier points out that the Claimant was indeed responsible for failing to secure the assembly on his machine. His actions caused the accident and resulted in damage to the equipment.

DECISION

The Board has reviewed the facts of this case. The Claimant has a long tenure with the Carrier. Although he has been dismissed in the past for a Rule G violation and subsequently for failing to comply with his conditional reinstatement, it appears he has made considerable strides since his reinstatement in 1989. There was no suggestion and no evidence presented which indicated that his failure to secure the assembly on the spiker-gauger was related in any way to substance abuse. For this reason, the Board believes the penalty issued was too severe.

AWARD

The fifteen (15) calendar day suspension is to be reduced to a ten (10) calendar day suspension. The Claimant is to be reimbursed the difference between what he earned as a result of the fifteen (15) calendar day suspension and what he would have earned with a ten (10) calendar day suspension.

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


Carol J. Zamperini, Neutral

Submitted this 27th of December, 1996.
Denver, Colorado