

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 189
Award No. 189

Claimant: D. B. NOVELLA

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE Union Pacific Railroad Company

STATEMENT
OF CLAIM

1. That the Carrier's decision to assess Claimant a thirty (30) calendar day suspension without pay was excessive, unduly harsh and in abuse of discretion and in violation of the terms and provisions of the current 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 has worked for the Carrier since June 2, 1977. At the time of the alleged rule violation, he was working as the Foreman of Surfacing Gang S-9. On the day of the incident, the Claimant went on duty at Warm Springs and off duty later that same day. Around 1:50 p.m., October 7, 1996, he allegedly allowed the track equipment under his charge to exceed the authorized limits. This occurred at east limits CP Cahill in the vicinity of San Jose, California.

The Carrier believed the evidence presented at hearing substantiated the following rule violations:

1.1 Safety

Safety is the most important element in performing duties.

Obedying 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.

Rule 71.7.7, of the Chief Engineer's Instructions, that portion which states:

Foremen 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.

Rule 72.0.1.4, of the Chief Engineer's Instructions, that portion which states:

Within CTC territory. . .when main track or controlled siding is occupied by roadway machines, track and time limits will be secured from Train Dispatcher to afford protection against trains and engines without flag protection as required by Rule 5.4

Track and time limits will be secured by foreman from Train Dispatcher, complying with Rules 10.0.

Rule 80.3.1 Job Briefing Information

All information related to on-track safety must be given in the job briefing to every roadway worker who will foul the track. In addition to other safety issues, the minimum On-track Safety Information must include:

Track limits of track authority,
Time limits of track authority, . . .

Rule 10.1(M) Authority to Enter CTC Limits

CTC limits are designated in the timetable. A machine, track car, or employees must not enter or occupy any track where CTC is in effect unless:

The control operator grants track and time under Rule 10.3 (Track and Time).

The Claimant was suspended for thirty (30) calendar days without pay for the cited violations.

CARRIER'S POSITION

The Carrier claims that the Claimant violated the cited rules when he exceeded his track and time limits on the day in question. They contend he did not secure the track and time limits and therefore was not afforded the necessary protection. The Carrier further contends that the Claimant did not conduct the proper job briefing and failed to relay the correct track and time limits to the employees working within his charge. They argue that since he did none of these things, he entered track and time limits without the proper authority.

The Carrier claims that when they investigated the charge by listening to the tapes from the Amtrak Dispatcher and reading the Digicon, it was clear the Claimant had been cleared between CP Michael and CP East Cahill. However, the tamping machines under his charge went beyond East Cahill without obtaining the proper Track and Time limits. The tamping machines left their authorized area around 1:48:38 p.m. and did not return to their authorized area until 1:56:50 p.m..

ORGANIZATION'S POSITION

The Organization believes the fact that the Roadmaster issued discipline to the Claimant's two co-workers even before the hearing, indicates an extreme prejudgment. They also point out that up until reaching the limits of Cahill, the tamper operator had done everything he should have done. They argue that for some reason he took the instructions of the Claimant literally rather than stop at the Cahill limits.

Furthermore, the Organization argues that the Claimant followed all of the rules and regulations. They believe he should bear no responsibility for equipment operators who knew where to stop, but exceeded the limits. They ask that the Claimant be returned to service and compensated for all time lost.

DECISION

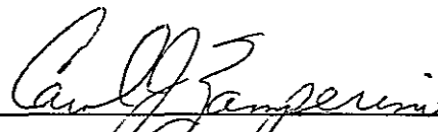
Even the Claimant does not deny that he did tell the machine operators to stop just short of the depot. As foreman, he should have been aware that this order, was contrary to the track limitation he had been given. He had an obligation to clarify any differences between the limits given by the Dispatcher and the verbal instructions he gave to the machine operators. Despite the Claimant's contentions, there was no evidence presented that the machine operators knew that stopping "just short of the depot" meant stopping at the Cahill limits.

However, the Board believes that the thirty (30) day suspension may be excessive for the following reasons. First, the machine operators, albeit not Foremen, were aware that they had been granted track limitation to the Cahill limits. If they were confused, they could and should have radioed the Claimant and received clarification. As recognized by the Carrier they must share in the blame. Secondly, the Claimant has had a fairly good employment record over the last five years and prior to that it has certainly been acceptable. It is true he was disciplined in 1991, but, that was over five years ago. His record shows that in 1989, he was given a 15 day deferred suspension for failure to report a personal injury. Those incidents, respectively, were five and eight years ago.

The Claimant should realize, however, that it was ultimately his responsibility to make sure his gang honored the track and time limitations. He cannot dismiss what happened by transferring the blame to his crew or to faulty signs. He must assume his share of the responsibility.

AWARD

The thirty (30) calendar day suspension is to be reduced to a fifteen (15) actual working days suspension without pay. He is to be reimbursed the difference between the thirty (30) calendar day suspension and the fifteen (15) actual working days suspension.



Carol J. Zamperini, Neutral

Submitted this 27th of February, 1998.
Denver, Colorado