

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 195

Award No. 195

Claimant: W. G. ROBIN

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Union Pacific Railroad Company

STATEMENT
OF CLAIM

1. That the Carrier's decision to assess Claimant a one (1) 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 Claimant was employed by the Carrier for 12.5 years at the time of the Investigation concerning this matter. He as a Machine Operator and at the time of the charges he operated a Compressor.

By letter dated November 11, 1996, the Claimant was directed to attend a formal Investigation on December 3, 1996, in Roseville, California. The purpose of the hearing was to determine if he was responsible for violating Rule 1.1.2 of the Safety and General Rules For All Employees, effective April 10, 1994, and Rule 26.8. The cited rules read as follows:

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.

26.8 Position of Employees (fourth paragraph)

Employees must not stand or walk beneath or beside a load being handled by a crane, hoist or wrecker, or go underneath the boom unless duty requires it and then only after notifying the operator and taking necessary precautions for protection.

The Carrier reviewed the transcript and decided that the evidence supported the charges. The Claimant was assessed a one (1) day suspension without pay.

The charges stemmed from an incident which occurred on November 15, 1996, while the Claimant was using a lining bar to line rail plates. The charging officer alleged that the Claimant had improperly placed himself within the striking distance of the rail tongs. As a result, when the tongs holding the rail slipped, they struck the Claimant on the shoulder and knocked him down causing a personal injury.

CARRIER'S POSITION

The Carrier argues that there is sufficient evidence to show that the Claimant violated the cited rules. They contend the Claimant had a responsibility to be sure the equipment operator stopped the machine before he attempted to work on the rail plate. Furthermore, the Carrier insists the Claimant erred when he placed himself between the tongs and the machine.

ORGANIZATION'S POSITION

The Organization, on the other hand, contends the Claimant has been relied upon not only by his Foreman, but, his supervisor to do a variety of jobs that demonstrate a higher degree of responsibility than that required of the average worker. They argue that they apparently consider the Claimant one of their best employees.

Furthermore, the Organization insists, the employee operating the machine on the day of the incident was very young and inexperienced. They point out that one of the witnesses testified that he did not feel safe working with the young operator. The Organization argues that the operator may have contributed to the accident by failing to respond to the Claimant's hand signals.

In any event, the Organization points out that the Carrier has the burden of proof in upholding the charges and the evidence

falls short of that burden.

DECISION

There is some evidence in this case which supports the Claimant's contention that the machine operator lacked experience and could possibly have moved his machine unexpectedly. However, while there was testimony that the operator had made such mistakes in the past, there was no concrete evidence that it happened on the day in question.

In any case, the Claimant by his own testimony and that of his Foreman, knew about the operator's inexperience, as well as, his failure on at least two occasions to observe and follow the Claimant's signals. Therefore, it behooved the Claimant to be extraordinarily cautious. He should have taken the necessary steps to be sure the machine operator was aware of what he intended to do and would hold the machine in position. Even if there was adequate proof that the new operator moved the machine unexpectedly and unnecessarily, the Claimant must at least share the blame for the accident. Fortunately he was not injured more seriously.

In view of the facts of this case, the Board believes the penalty issued was justified.

AWARD

The claim is denied.


Carol J. Zamperini, Neutral

Submitted this 30th of January, 1998.
Denver, Colorado