

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 196
Award No. 196

Claimant: C. M. SPYCHALSKI

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 sixty (60) 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 February 10, 1997, the Carrier sent a certified letter to Claimant directing him to appear at a formal Investigation on February 20, 1997, in Tucson, Arizona. The stated purpose of the hearing was to determine whether the Claimant violated Rules 1.6 and 1.7 of the Southern Pacific Lines Safety and General Rules for All Employees, particularly those sections reading:

1.6 Conduct

Employees must not be:

6. Quarrelsome
7. Discourteous

Any act of hostility, misconduct. . .affecting the interests of the Company or its employees is sufficient cause for dismissal.

1.7 Altercations

Employees must not enter into altercations with each other, play practical jokes, or. . .while on duty or on railroad property.

After reviewing the transcript of the hearing, the Carrier concluded that the Claimant violated the cited rules. He was issued a sixty (60) calendar day suspension without pay. The Organization appealed the Carrier's decision on behalf of the Claimant.

The incident which precipitated the charges against the Claimant occurred on February 5, 1997, near Bosque, Arizona. On that day, the Claimant was allegedly involved in an altercation with a co-worker. At the time, both employees were Spiker Gauge Operators on the T-3 Tie Gang. Sometime after 7:30 a.m., the Manager of Track Programs was notified that the two employees were involved in an altercation. He was told the incident followed an argument between the two employees.

The Manager immediately went out to the work site and met with the two employees. Initially he attempted to "work things out" by getting the two men to reconcile and apologize. By all accounts, they did this half-heartedly. Later that morning the Claimant's co-worker asked to speak to the Manager. He then told him that he did not believe the Manager realized the severity of the altercation. He then explained that he had been pushed down by the Claimant so hard he had broken his glasses.

After hearing the co-workers account of the altercation, the Supervisor continued to investigate the matter. The inquiry revealed that the altercation occurred after the co-worker urinated next to the front door of the Claimant's car after he observed the Claimant urinating on or near his truck. Evidence showed that while the co-worker was in the process of urinating, the Claimant ran towards him and shoved him from the back so hard the co-worker fell forward. His glasses were knocked off and broken.

The Claimant was determined to be the aggressor and was removed from service.

CARRIER'S POSITION

The Carrier contends that the Claimant was the aggressor in the altercation. They say he started the disagreement earlier in the day by arguing with the co-worker. Then, they argue, he

forcefully shoved the co-worker down with such intensity, the co-workers glasses were knocked off and broken. Certainly the Carrier believes the charges were proven by substantial evidence and the penalty issued was appropriate.

ORGANIZATION'S POSITION

The Organization argues that the Carrier obviously prejudged the Claimant when they removed him from service prior to the Investigation, while allowing the co-worker to remain in service. They further contend that incident started out as a small incident and unfortunately escalated. They insist confrontations happen all the time in large gangs. The Organization believes both employees have learned a lesson and no further punishment was necessary.

The Organization urges the Board to clear the Claimant's record and reimburse him for any and all wages and benefits lost as a result of his suspension.

DECISION

The Board has reviewed the facts of this case carefully. When analyzed in conjunction with the Claimant's employment record, we find that the Claimant has demonstrated either an inability or an unwillingness to modify his behavior. He has been disciplined numerous times over the years and still fails to refrain from unacceptable behavior.

Under the circumstances, the Board believes the penalty issued in this case was appropriate.

AWARD

The claim is denied.



Carol J. Zamperini, Neutral

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