

SPECIAL ADJUSTMENT BOARD NO. 947

Award No.2

Case No. 2

PARTIES
TO
DISPUTES

Brotherhood of Maintenance of Way Employees
and
Southern Pacific Transportation Company (Western
Lines)

STATEMENT
OF CLAIM

1. That the Carrier violated the provisions of the Agreement when on December 28, 1982, at approximately 9:30 A.M. it removed Track Laborer, Francisco Tahudo Moreno, from service pending a formal hearing which was held on January 13, 1983, for an alleged violation of Carrier Rule 801, and thereafter, advised Mr. Moreno by letter dated, February 3, 1983, that he was in violation of said rule, and therefore was suspended for forty-one (41) calendar days effective December 28, 1982 through February 7, 1983.
2. That Mr. Francisco Moreno be compensated for all time lost as a result of their improper suspension and that the charges relative to this issue be expunged from his record.

FINDINGS

Upon reviewing the record, as submitted, I find that the Parties herein are Carrier and Employee 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 the sole signatory.

The Grievant, Francisco Moreno, was a Track Laborer who worked on Extra Gang 36 out of the Berkeley, California Headquarters.

On December 23, 1982, his gang, along with two others, were working on Track number 50 at the West Oakland yard. At around 11:15 A.M., Mr. Moreno was told to remove a tie from under the rail. When he attempted to remove the tie from under the rail, his tongs slipped. His momentum carried him backwards and he fell over scrap ties located immediately behind him. He continued working until his 11:30 A.M. lunch break. After lunch he started to work again, but realized he had injured his back in the fall earlier. After reporting to his foreman, Mr. Duran, he was taken to see the doctor.

Mr. Moreno's foreman was Sacramento Duran. Mr. Duran, along with two other foremen, Peter Alexander Romero and Jose Luis Ramos, testified that Mr. Moreno was told to remove the scrap ties from behind him before he attempted to remove the tie from under the rail. In addition, there was testimony to the effect that Mr. Moreno upon hearing the direction, replied he could remove the tie from under the rail without moving the scrap ties. Further testimony indicated there was no response from any of the foremen to Mr. Moreno's statement. At the hearing Mr. Moreno stated he had not been told by anyone to remove the scrap ties. He also claimed that he was not familiar with the Rule he allegedly violated. However, at the hearing, Mr. Duran indicated the General Rules and Regulations of the Transportation Department are posted in his department in both English and Spanish.

Mr. Moreno was employed by the Carrier on October 20, 1969. His employment record lists five (5) sustained injuries over his thirteen (13) years of employment. Two of those were back injuries, while one involved an eye injury. The other two appear from the record to have been minor. Aside from the current disciplinary action, Mr. Moreno's record is clear. There is no record of any type of disciplinary action ever taken against Mr. Moreno. Certainly insubordination is a serious charge, especially when the safety of employees is endangered as a result of the failure to obey an order. In this case, Mr. Moreno was issued an order. He responded to the effect, he did not believe it was necessary to remove the scrap ties to accomplish his primary task. None of the three foremen at that point felt it necessary to reaffirm the directive to Mr. Moreno. If Mr. Moreno's employment record had indicated a rebellious or arrogant attitude on other occasions, I would believe he intentionally disregarded a supervisor's order. In the present situation, however, I believe once he stated it wasn't necessary to remove the scrap ties, he felt it was okay to proceed with the removal of the tie from under the rail. At least, the foreman must take some blame for not reinforcing his original command. More importantly, Mr. Moreno is an employee with thirteen (13) years of experience. As discussed previously he has an unblemished disciplinary record. Although it must be impressed on Mr. Moreno that he is to obey the orders of his Supervisor, unless the orders would result in some personal risk to himself or others, a forty-one (41) calendar day suspension

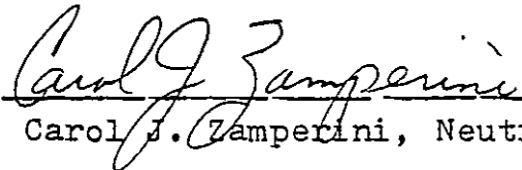
is excessive in light of Mr. Moreno's record, especially when there is no evidence of any previous warnings regarding Rule 801.

AWARD

The Claim is sustained in part; the forty-one (41) calendar day suspension is reduced to a five (5) working day suspension with seniority unimpaired.

ORDER

The Carrier shall comply with the above Award within thirty (30) days from the date submitted.


Carol J. Zamperini, Neutral

Submitted:

June 11, 1984
Denver, Colorado