

SPECIAL ADJUSTMENT BOARD NO. 947

Award No.3
Case No. 3

PARTIES
TO
DISPUTE

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, by letter dated December 29, 1982, it disqualified Richard Ely Hopkings as a Ballast Regulator Operator and suspended him from service for a period of thirty (30) calendar days, commencing January 1, 1983 through January 30, 1983, for allegedly violating Rule M869 and Rule 801, said action, following an investigation and a formal hearing which took place in Bakersfield, California, December 10, 1982, during which Mr. J. D. Maxwell, District Maintenance of Way Manager, Southern California Region, assisted in conducting the hearing, which violated Rule 45 of the Agreement since Mr. Maxwell was the District Manager in the region in which this accident took place and he had already investigated the incident and knew the information regarding the accident prior to the hearing.
2. That Richard Ely Hopkings be compensated for all time lost as a result of his unjust suspension and that he be considered qualified as a Ballast Regulator Operator and that his record be expunged of all charges incident to this matter.

FINDINGS

Upon reviewing the record, as submitted, I find that the Parties herein are Carrier and Employees with 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 Grievant was a Ballast Regulator Operator who worked out of the 7th Standard Road Headquarters in Bakersfield, California. On November 17, 1982, Mr. Hopkings, Mr. Thomas David Lupio, Extra Gang Foreman, 72, and Martin Sias, Machine Operator, were assigned to go to Goshen, California to return a tamper to Bakersfield. Mr. Lupio and Mr. Sias rode on the tamper and Mr. Hopkings drove the ballast regulator, remaining a safe distance behind during their trip from Goshen to Saco, California. During the trip the equipment traveled at a speed of about 10-15 miles per hour. As they entered Saco and neared the west end switch, which was where they were to stop to get more clock time, the tamper machine unaccountably slowed down to one (1) mile per hour. Mr. Lupio and Mr. Sias jumped from the machine to try to determine what was wrong, but could not. They were directed to proceed in order not to disrupt traffic. Mr. Hopkings who was behind them, noticed the men disembarking and slowed down to about one (1) mile per hour. When he saw them board again, he accelerated to about five (5) miles per hour. When the Grievant was 200 feet away he did not realize the tamper was still only moving at about one (1) mile per hour, however, when he was about 78 feet from the machine, he knew he was approaching too quickly and attempted to apply the brakes. His vehicle was unable to stop in time and he hit the tamper machine.

Mr. Hopkings, who was employed with the Company on January 4,

1954, qualified as a Ballast Regulator Operator in 1980 and since then had operated the same ballast regulator. During the formal hearing all three men involved in moving the tamper machine from Goshen to Bakersfield on November 17, 1982, testified that there was mechanical problems with both the tamper and the ballast regulator. According to their testimony the tamper was leaking a great deal of oil which covered the rails and made them slippery. However, Mr. Jack Nelson, Work Equipment Supervisor, testified he doubted there could be sufficient leakage to cause oil to cover the rails since the problem involved a fitting for a cylinder and since no pressure could build up there would be no leaking. The problem with the ballast regulator centered around its brakes. Apparently only three brake shoes were working. None of these problems interfered with the trip from Goshen to Saco.

Anytime the safety of employees and/or others is at stake, equipment must be operated in a safe effective manner. Mr. Hopkings had operated the same ballast regulator for two years. He was and should have been aware of its mechanical "characteristics". He did testify that he was aware of the brake deficiencies and indicated he was careful to maintain a safe distance behind the tamper during the trip from Goshen to Saco. He also stated he was cognizant of the oil leakage from the tamper. If he had been more alert during the time the tamper appeared to develop trouble and the time they were to arrive at the west end switch at Saco, the accident most

probably could have been avoided. It also most probably would have been avoided if Mr. Hopkings had been forewarned of the mechanical problems which developed with the tamper, but he was not. At least some of the blame should be shared in this instance.

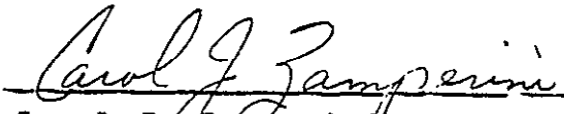
Taking all things into consideration, the Grievant did show bad judgement which contributed to the accident, but he worked for the Company for over twenty-eight (28) years at the time of this incident. His employment record is unblemished with the exception of one accident which occurred in 1974. The discipline issued to him in this matter is excessive.

AWARD

The claim is sustained in part; Mr Hopkings is to remain qualified as a Ballast Regulator Operator and his suspension is to be reduced to ten (10) working days; he shall be made whole for all loss sustained in excess of that amount of time. The remainder of the claim is denied.

ORDER

The Company is to comply with this order within thirty (30) days of its issuance.


Carol J. Zamperini, Neutral

Submitted:

June 11, 1984
Denver, Colorado