

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - Jose P. Lopez
Award No. 55
Case No. 55

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

That the Carrier's decision to place a letter of reprimand on Claimant's personal record was excessive, unduly harsh, and in abuse of discretion, and in violation of the terms and provisions of the current Collective Bargaining Agreement.

That because of the Carrier's failure to prove and support the charges by introduction of substantial bona fide evidence that the Carrier now be required to expunge letter of reprimand from Claimant's personal record, 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 May 26, 1987, the Claimant was installing ties with a scarifier near Fields, Oregon at MP 557. Because the crew was

behind in its work, they were not cleaning up the tie plates as they went along. This resulted in an inordinate number of plates strewn along the sides of the tracks.

At one point, while the Claimant was working, he found it necessary to stand on some of the tie plates. His feet slipped and he locked his knee and the knee began to swell. He approached his Supervisor and asked to fill out a 2611, but did not want to take time to go to the doctor. He instead wanted to wait until the next day to see if the knee improved. He attempted to work the next day, but his foot swelled uncomfortably. At that point he decided to see a doctor.

The Claimant's Roadmaster, L. C. Lybarger, discussed the situation with his immediate Supervisors. On June 2, 1987, he sent a letter to the Claimant notifying him that a formal hearing would be held to investigate his responsibility in violating portions of the following rules of the Rules and Regulations of the Maintenance of Way and Structures:

Rule A: Safety is of the first importance in the discharge of duty. Obedience to the rules is essential to safety and to remaining in service.

Rule I: Employees must exercise care to prevent injury to themselves or others. They must be alert and attentive at all times when performing their duties and plan their work to avoid injury.

Rule 607: CONDUCT: Employees must not be:
(1) Careless of the safety of
themselves or others:

(2) Negligent;

Any act of hostility, misconduct or willful disregard or negligence affecting the interests of the Company is sufficient cause for dismissal and must be reported.

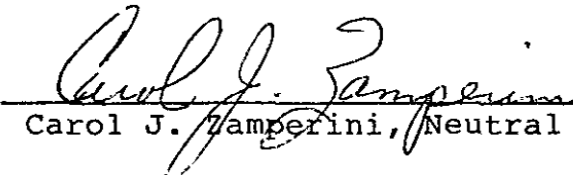
The hearing was eventually held on June 16, 1987. The Claimant was advised by letter dated July 9, 1987 that, while the evidence at the hearing failed to establish his responsibility in violating the aforementioned rules, he was reminded that he alone was responsible for conducting himself in a safe manner. He was also told the accident could have been prevented if he had followed the rules. The Carrier argues that the letter was to be considered instructional. The Claimant and the Brotherhood took exception to the tenor of the letter and asked that it be expunged from the Claimants personal file and destroyed.

Certainly the Carrier has the right to issue instructional letters to its employees reiterating various rules. The only question is whether the wording of the letter issued to the Employee in this case, serves more as a letter of reprimand than an instructional letter. By the Carrier's own determination, there was not enough evidence introduced at the hearing to establish the Claimant's responsibility in injuring himself. Therefore, they cannot discipline the Employee for the incident. If the evidence presented at the hearing had been sufficient to

find him guilty, a letter of reprimand would have been appropriate. Absent that, the Carrier has no choice, but to issue a letter of instruction concerning the aforementioned rules without referring to the incident which precipitated the investigation of June 16, 1987 and without placing blame on the Claimant.

AWARD

The claim is sustained; the letter will be removed from the Claimant's personal file.


Carol J. Zamperini, Neutral

Submitted:

January 29, 1988
Denver, Colorado