

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - T. Robertson
Award No. 58
Case No. 58

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 suspend Claimant from its service for a period of twenty-three (23) days 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 sustain and support the charges by introduction of substantial bona fide evidence that the Carrier now be required to compensate Claimant for all loss of earnings he 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 October 16, 1987, Labor/Operator, T. Robertson, along with Supervisor, A. Whitson, was operating a motor car between

Martinez and Crockett. They commenced work on the track at Martinez and worked their way eastbound toward Suisun. They then made their way back to Martinez where they stopped for lunch. After lunch, they went westbound toward Crockett. At Port Costa Spur at Crockett, they set the motor car off the track and Supervisor Whitson called 16th Street Tower to find out what trains were coming eastbound. When he was advised there were no trains heading eastbound for one (1) hour, the two men placed the motor car back on track and headed eastbound toward Martinez. When they arrived at Molasses Spur, they stopped to do some work. Within a short time, Mr. Whitson noticed that the block signal was green. Realizing a train was approaching from the east, they quickly switched the motor car into a spur. They narrowly missed getting hit by the OAWCM, Extra 9272. Once again Whitson called the 16th Street Tower. He told the Control Operator they were almost hit and the Operator apologized, indicating he thought they had asked for the westbound trains the first time. He then advised there would not be another train eastbound for an hour. The two men removed the motor car from the siding and once again headed toward Martinez. At Eckley they noticed another green block signal. This time they attempted to clear the track, but the Engineer of the approaching Extra 9396, OARVM saw them and went into emergency. This caused the train to be delayed.

The two men were advised by letters dated October 20, 1987, that an investigation would be held on October 21, 1987 to

determine if they placed the motor car on track without appropriate protection. As far as T. Robertson was concerned the hearing was to determine if he had violated:

Rule 951. PLACEMENT OR MOVEMENT ON TRACKS:
Track cars may be placed upon the track and operated with following types of protection:

- (1) Track car line up (Rule 952)
- (2) Rule 252 (Track Permit)
- (3) Rules 265-269 (Direct Traffic Control)
- (4) Rule 351 (B) (Track and Time)
- (5) Rule 412 (Track Warrant Control)
- (6) Rule 455 (Track Bulletin)
- (7) Forms "X" and "Y" Train Orders
- (8) Flag Protection per Rule 99

If a line-up or protection under the above rules cannot be obtained, motor cars only may be operated if absolutely necessary in cases of emergency. When two or more employees are with a motor car, they must flag curves and other places where view is obstructed. When there is only one, he must proceed with caution, stopping frequently until he reaches a point where the view is unobstructed. All other types of track cars must be protected by at least one of the above listed rules.

Rule 956. INFORMED ON TRAIN MOVEMENT:
Track car operators will at all times keep themselves informed as to train movements as far as possible and by all methods available. Reference to timetables and line-ups must be made frequently. Trains must be checked from line-ups as they pass.

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

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.

The service demands the faithful, intelligent and courteous discharge of duty.

When the two men started out in the motor car the morning of October 16, 1987, they had two effective line-ups one issued early in the morning until 10:00 a.m., the other good from 10:00 a.m. until 2:00 p.m.. It was while they were at Crockett that the second line-up expired. Rather than call for an up-dated line-up they chose instead to call the 16th Street Tower to secure information as to whether there were any trains approaching toward Crockett from the east.

This Board is convinced the Supervisor is telling the truth regarding the information he received from the Control Operator working the Tower. Not only was the testimony of the Claimant and the Supervisor, A. Whitson, credible, but their testimony was validated by the testimony of Carrier witness H. C. Ballance. It appears the Control Operator at the Tower made errors because of his lack of familiarity with the information supplied at the Tower. It appears probable the Control Operator was confused the day in question since he did not seem to recognize a line-up when he was questioned by his Supervisor following the near miss.

The question is whether or not the Claimant properly protected himself before placing his motor car on the track. Certainly this Board believes the Claimant was confident he had obtained the appropriate protection by calling the 16th Street

Tower. However, the entire incident shows that an up-dated line-up should be obtained even though a call to the tower should provide sufficient information. A double check is always better than one. Therefore, we do believe the Claimant should have obtained a up-dated line-up at Crockett in addition to the phone call to the 16th Street Tower. It should be noted that the Claimant was working with a Supervisor. As such, it is unlikely he would have challenged the Supervisor's authority. When the Supervisor felt comfortable making the call instead of obtaining an up-dated line-up, there is little reason to expect a subordinate to demand something additional. It was evident, however, that the Claimant, himself, felt the phone call should be sufficient.

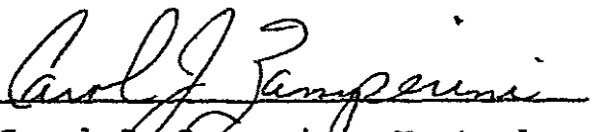
The Claimant has been disciplined one time during his three (3) years of service. That was a fifteen (15) day suspension for violating Rules 604 and 607. While a twenty (23) day suspension might normally follow a fifteen (15) day suspension when using progressive discipline, this Board does not believe it is an appropriate penalty in this case.

The Claimant was with a Supervisor. If there is any blame here, it should rest more with the Supervisor than with the Subordinate. Beyond this fact, both men felt they had protected themselves by calling the 16th Street Tower. There is no reason they should not have received the proper information. If they had they would not have experienced a near miss with either of

the two trains involved. Because this Board believes the Control Operator must burden most of the responsibility, the discipline issued to the Claimant was excessive.

AWARD

The claim is sustained in part; the twenty-three (23) day suspension will be reduced to a five (5) day suspension. The Employee will be reimbursed all wages in excess of this amount.


Carol J. Zamperini, Neutral

Submitted:

February 3, 1988
Denver, Colorado