

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - K. R. Hughes
Award No. 59
Case No. 59

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 ninety (90) 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.

The Claimant has been employed by the Carrier since July 19, 1976. On June 9, 1987, he was taken into custody by the Mt.

Mt. Shasta Police Department and subsequently charged with violating Section 288(a) of the California Penal Code. The charge stemmed from his sexual conduct with the five (5) year old daughter of his fiancée. The Employee admitted the occurrence and voluntarily entered into counseling.

The Carrier was aware of the charge, but did not set up an investigation until November 18, 1987. The Carrier requested the Claimant appear at the formal hearing, which was actually held on November 23, 1987. The purpose of the hearing was to determine whether or not the Claimant was responsible for violating:

Rule 607: CONDUCT: Employees must not be:
(5) immoral

The Claimant was notified by letter dated November 30, 1987, that he would be suspended for ninety (90) days effective December 1, 1987 through February 28, 1988.

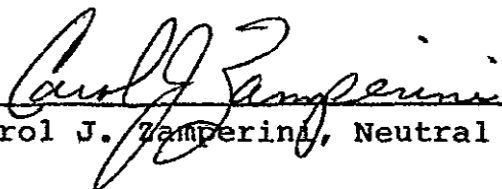
The Board believes the Carrier had the right and the obligation to have had some assurance in this matter that the Claimant had sufficient time to complete his period of incarceration and to obtain essential psychological therapy before returning to work. The Employee, in this case, confessed to having had sexual conduct with the five (5) year old girl. The offense is serious enough to warrant a lengthy suspension. The suspension was not only an appropriate one, but it allowed the Claimant sufficient time to serve his Court imposed sentence while still protecting his employment and it allowed the Carrier

sufficient time to evaluate the Claimant's progress in therapy.

The Board recognizes that an officer of the Carrier conversed with the Claimant's attorney, Mr. Hintz, sometime around November 16, 1987. According to a follow-up letter from the attorney, there appeared to be some desire on the part of the Claimant to offset this suspension time by the utilization of his available vacation time. If that was indeed the request of the Claimant it should have been allowed.

AWARD

The Claim is denied, except that, if the Claimant requested or requests the use of available vacation time to offset some of his suspension time it should be granted in this case.


Carol J. Zamperina, Neutral

Submitted:

February 2, 1988
Denver, Colorado