

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - Frank Martinez Robles
Award No. 64
Case No. 64

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 thirty (30) 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 prove and support the charges by introduction of substantial bona fide evidence, that Carrier now be required to compensate Claimant for any and all loss of earnings 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 Carrier held a formal hearing on November 18, 1987, to determine whether the Claimant had violated Rule 607 of the General Rules and Regulations for the Government of Maintenance

of Way and Engineering Department Employees of the Southern Pacific Transportation Company. By letter dated December 9, 1987, the Carrier advised the Claimant they considered the evidence brought forth at the hearing sufficient to establish his responsibility in violating the rule as charged. They issued to him a thirty (30) day suspension, effective November 9, 1987 through December 18, 1987.

The rule cited by the Carrier reads in part:

Rule 607:

CONDUCT: Employees must not be:

(4) Dishonest, . . .

Any act of . . . misconduct . . . affecting
the interests of the Company is sufficient
cause for dismissal. . . .

From the testimony presented through the transcript of the investigation, this Board believes the Claimant manipulated his work schedule to his own liking. Not only did he leave work without proper authority, but he applied for overtime to which he was not entitled. While the Claimant may not have realized it at the time, his actions constituted theft. He was paid for time he knew he had not worked. Therefore, he knowingly accepted a salary he had not earned.

This Board has continually held in the past that serious violations such as insubordination and theft usually warrant severe penalties in and of themselves and are not necessarily subject to the concept of progressive discipline.

In addition, the Claimant, at least during this same

period, was argumentative toward his supervisors. In a totally unacceptable manner, he attempted to intimidate and threaten them. Supervisors have the right to direct the work force free from unwarranted harrassment by employees. Hopefully the Claimant will recognize his obligations relative to orders he receives from supervisors in the future.

While it is obvious the Claimant was going through a very trying time in his life, it was the Carrier's prerogative, under the circumstances, to determine whether they chose to consider that a mitigating factor. This Board does not believe, in view of the rule infraction cited and the overall behavior of the Claimant, the penalty issued was unreasonable.

AWARD

The claim is denied.


Carol J. Zamperini, Neutral

Submitted:
May 26, 1988
Denver, Colorado