

SPECIAL ADJUSTMENT BOARD NO. 947

Award No. 7
Case No. 7

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

1. That the Carrier violated the provisions of the Agreement when, by letter dated April 26, 1983, it suspended from service without pay, John Lee Salas, Extra Gang Foreman, for a period of thirty (30) calendar days, for violating Rule M228(4) and Rule 5031 of the Rules and Regulations for the Maintenance of Way and Structures, after reviewing the evidence presented at a hearing which was held at the office of the Maintenance of Way Manager, Paso Robles, California, on March 24, 1983 after having been postponed on two different occasions, the action taken by the Company was harsh and excessive.
2. That Mr. Salas, who is a good employee and did what he viewed best for the Company be cleared of all charges and his record be expunged.

FINDINGS

Upon reviewing the record, as submitted, I find that the Parties herein are Carrier and Employes 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 February 12, 1983, Mr. John Lee Salas, Extra Gang Foreman,

was in charge of a crew that was to surface the sink at Serrano, MP 243.2, commonly known as the Waterfall. The ballast operator assigned to the ballast regulator did not show up for work. After calling him twice, and getting no answer, Mr. Salas decided to operate the ballast machine himself. At one point he directed his crew to put their machines on the siding on the east end of Serrano, while he remained behind filling in the cribs of the ties. While going about ten (10) miles per hour, he noticed the tamper backing into the clearing going at an angle in the opposite direction to his equipment. At a distance of 500 feet from the tamper, he attempted to apply his brakes. It was raining and had been during the day, as a result his boots were muddy and as he placed his foot on the brake pedal, his foot kept slipping off. He then tried to stop his machine by applying the emergency air brakes, the hand brake, and placing the plow in a downward position. Regardless, he ran into the tamper. After an investigation and a hearing, the Company suspended Mr. Salas for thirty (30) calendar days for violating Rule M228(4) and Rule 5031.

The grievant, John Lee Salas, had nearly 17 years of experience with the Southern Pacific Transportation Company at the time of the accident. He was obviously a good employee. He had a very fine discipline record and qualified as a foreman in 1979. Although his record indicates he had some accidents which resulted in personal injuries, I don't believe they were of inordinant number considering his work around machinery. Beyond

that, there is nothing to show he has had any accidents with machinery before the present incident.

Perhaps Mr. Salas, showed poor judgement when he chose to operate the ballast regulator rather than wait for a replacement for the worker who did not show up. However, it was evident through his testimony, which was very credible, his real concern was to prevent any delays in the movement of trains sheduled to go over the track he was responsible to maintain. Certainly an employee whose interest is assuring productivity, cannot be criticized for those intentions. The fact the accident which occurred on February 12, 1983, was so costly (in excess of \$34,000) is more than unfortunate, however, it should not result in excessive punishment.

If it had not been raining on February 12, 1983, it is highly probable the accident would not have happened. If there was a serious fault in Mr. Salas' judgement, it was in not realizing his constant up and down from the ballast regulator in order to do two jobs, would create a less than safe situation as the floor and pedals of his equipment became wet. Under normal circumstances that would not have occurred. He should have taken greater precautions to prevent his feet from slipping, but that becomes easier to see in retrospect. I am sure in the future he will display more caution when operating the machinery during wet conditions and I am also sure he will check with his supervisors before operating equipment even when short handed.

SBA No. 947
Award No. 7
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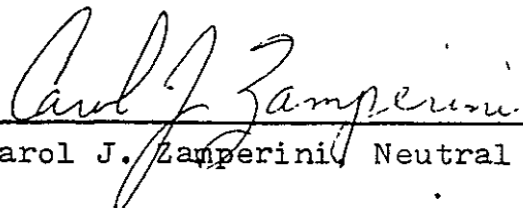
Taking into account everything, Mr. Salas,' fine record, his length of employment, and certainly his good intentions toward the Company, I find the discipline issued Mr. Salas to be excessive.

AWARD

The claim is granted in part; the suspension of Mr. John Lee Salas is to be reduced to a five (5) day suspension; the rest of the claim is denied.

ORDER

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



Carol J. Zamperini, Neutral

Denver, Colorado
June 21, 1984