

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - J. G. Garcia
Award No. 70
Case No. 70

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employes
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 fifteen (15) working 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 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 8, 1988, near MP 78.8, the Claimant was injured while attempting to cut a piece of rail out of the track and replace it with another piece of rail. As he was operating the

saw, the arm loosened pulling away from the saw. When this happened, the Claimant bore the full weight of the saw which caused him to injure his lower back. Two days later, the Carrier sent a certified letter to the Claimant advising him to be present at an investigation to be held on February 23, 1988 for the purpose of determining whether he had violated Rule I and Rule 618 of the Rules and Regulations for the Government of the Maintenance of Way and Structures Employees, those portions reading:

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 618 Defective Equipment:

Employees must observe the condition of equipment and tools which they use in performing their duties and if found defective, must not use them until they are put in safe condition. . . No officer or employee of this Company is authorized to request or require an employee to use defective tracks, cars, machinery, tools or appliances of any kind. The Company does not require its employees to incur risk and directs them to exercise proper care and judgement to protect themselves.

Several issues were brought out in the review of the investigation. More than one employee was aware the saw in question was not in the best working order. In fact, even the mechanic was cognizant the saw needed to be repaired. However, the foreman wanted to finish the job of cutting and replacing a faulty section of rail before the saw became unavailable. He communicated this to his crew and to the mechanic. Furthermore,

at least one employee, who had used the saw on Saturday, February 5, 1988, refused to use the saw on the day in question after he realized the arm was coming loose.

The Claimant was directed to use the saw by the Foreman and did not refuse. The Claimant defended his actions by testifying that he always obeyed the orders given by a supervisor, in this case, the Foreman.

The Claimant has a relatively short tenure with the Carrier. He had been employed nearly two years at the time of this incident. His record showed one personal injury during his employment, which was a bruised hand on November 20, 1986. Other than that, his record is clean.

There is some merit to an employee's stated concern about refusing to obey a foreman's direct order. In the back of every employee's mind there is a stigma in not complying with the directions of a supervisor. While this Board recognizes that a foreman is a member of the Bargaining Unit and does not have absolute authority over his crew, he none-the-less carries the responsibility of directing the work force. Employees are obligated to work at a particular foreman's direction as long as they are assigned to his crew. In most cases, it takes a fairly secure employee to challenge the orders issued by his supervisor. This Board is not convinced that the Claimant fully recognized his right to refuse the directions issued by his foremen. We therefore believe the Carrier has an obligation in this case to use progressive discipline. We believe a lesser penalty would have made the Claimant aware of his right to refuse to use

defective equipment, even if directed to do so by someone in authority. It is essential for the well being of the employee and the Carrier that employees only use equipment which is in good operating condition. Otherwise serious injuries could occur. We are of the opinion, the Claimant now recognizes the inherent dangers in using equipment which is in bad order.

In view of all of these considerations, the Board believes the penalty issued was excessive for a first offense.

AWARD

The suspension issued to the Claimant is to be reduced to a three (3) day suspension; he is to be reimbursed all wages and benefits lost in excess of this amount.


Carol J. Zamperini, Neutral

Submitted:

June 8, 1988
Denver, Colorado