

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - D. R. Larson
Award No. 71
Case No. 71

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 five (5) 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.

The Claimant was working as Tractor Bulldozer Operator on February 16, 1988 dragging rail from a particular area. In order to do this he was using a 988 Cat end loader, a one (1") inch

cable and a clevis. While dragging rail, the cable turned over and he could not loosen it. A contractor who was near, cut a bolt off of the cable so it could be pulled loose. When the Claimant attempted to pull the Cable free, it twisted and the end cut a gash in the palm of his right hand.

A formal hearing was held on February 19, 1988. Following the hearing, the Carrier advised the Claimant by letter dated February 29, 1988, that they believed the evidence presented at the hearing was sufficient to support the charge he had violated Rules A and 607 of the Rules and Regulations of the Maintenance of Way and Structures Employees. The Carrier cited the following sections of the rules:

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.

Rule 607: Employees must not be careless of the safety of themselves and others. . . .

The Board has reviewed the personal record of the Employee. It appears he is a good employee, but has had at least eight (8) personal injuries during his 16 years of employment. We can appreciate the Carrier's concern that he attempt to be more careful in the future. However, we are equally concerned that the only disciplinary action taken against the Claimant prior to this were two discussions (cautions) given to the Claimant ten (10) years ago. In order for disciplinary actions to have a positive impact, they should be issued in a consistent manner. Going from a discussion to a five day suspension with a ten (10)

year span in between can hardly be considered consistent.

Understandably, the Carrier may have had serious concerns about the number of personal injuries suffered by the Claimant. If they in anyway felt the Claimant was guilty of negligence in any of the previous incidents, they should have issued some type of discipline between 1978 and 1988. Apparently they did not. In view of the length of time between the 1978 warning and the actions of the Employee in the instant case, a five (5) day suspension is inappropriate.

AWARD

The suspension issued to the Claimant is to be withdrawn; the Claimant is to be issued sixty (60) demerits. The Claimant is to be reimbursed all wages lost as a result of the five (5) day suspension.


Carol J. Lamperini, Neutral

Submitted:

June 9, 1988
Denver, Colorado