

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - B. D. Davis
Award No. 72
Case No. 72

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 ten (10) working days and the deduction of eighteen (18) hours of falsified overtime work from his earnings was excessslve, 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 served as a Foreman for the Southern Pacific Transportation Company on Extra Gang 47. On February 6 and 7,

1988, he was not assigned to work. However, one of the members of his gang was assigned to work a different gang. On that gang they worked eighteen (18) hours overtime. The Claimant put in for the overtime on his daily work log for February 6 and 7, 1988. When a supervisor was checking on how many worked the overtime involved and who they were, he discovered the Claimant had not actually worked, but had put in for the eighteen hours of overtime and had been paid.

By letter dated February 10, 1988, the Claimant was advised to be present at a formal hearing to determine whether he violated Rule 607 by applying for overtime he had not actually worked. The section of the Rule involved reads:

Rule 607: CONDUCT: Employees must not be:

- (3) Insubordinate
- (4) Dishonest. . . .

According to his personal record the Claimant had been disciplined on one other occasion for a similar rule infraction. In that case, he and his crew went home early, but all received a full day's pay as a result of the payroll submissions of the Claimant. In the instant case, the Claimant put in for eighteen hours overtime he did not work. In explaining why he applied for the overtime pay, he puts forth a very persuasive argument that he was only following a practice which existed among all foremen. According to his testimony if a member of a gang is called out to work when the foreman is available, the foreman logs the time as though he actually was called out. He further testified he knew of no other way to log the time.

While the argument is persuasive, the testimony of the Claimant's supervisor is also worth noting. He indicated he previously advised the Claimant to file a claim, if and when, he felt he had not received monies due him. Instead the Claimant chose to apply for the overtime without even questioning anyone in authority. This Board has continually ruled that self-help is not an acceptable approach for an employee. If an employee feels he has been affected by a violation of the Agreement between the Parties, he is to file a claim under the agreed to appeals procedure. He cannot make a determination himself that the Agreement has been violated and go on to fashion a remedy he deems appropriate.

Under the circumstances, the penalty issued to the grievant is not unreasonable. Especially since the grievant has been suspended for five (5) days on another occasion for applying for pay for time he did not work.

AWARD

The Claim is denied.


Carol J. Zamperini, Neutral

Submitted:

June 9, 1988
Denver, Colorado