

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - A. A. Gonzalez
Award No. 73
Case No. 73

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 two (2) 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 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 Claimant was notified by letter dated February 26, 1988, that the evidence presented at a formal investigation held on January 21, 1988 was sufficient to support charges he had

violated Rules A, I, and 607 of The Rules and Regulations of the Maintenance of Way and Structures. The portions of the rules cited included:

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.

Rule I: Employees must exercise care to prevent injury to themselves. . . . They must be alert and attentive at all times when performing their duties and plan their work to avoid injury.

Rule 607: CONDUCT: Employees must not be:
(1) Careless of the safety of themselves. . . .

The Carrier suspended the Claimant for a period of two (2) days.

The Claimant has worked for the Carrier since 1964. During his 24 years of service he has received three personal injuries, including the one involved in the instant case. There is no indication he has ever lost any time as a result of any of the three injuries. In addition, to his injuries, he was counseled twice, once in 1981 for Rule M and in 1982 for Rules 5031 and M869. Whether those discussions were provoked by any misactions on the part of the Claimant is not clear from the record. Regardless, in truth anyone would have to consider the 24 year record of the employe to be outstanding.

The Board finds no difficulty in believing the testimony of the Claimant. We believe he was honest and forthright. As we have said in previous awards, even though, a foreman may not have an absolute authority over his crew, there is at least a

perception that he has the prerogative to direct his crew on the way in which they accomplish and perform their work. It is not incredible that the Claimant believed it possible for the foreman to influence a decision which would have removed his eligibility on the Crib Reducer Machine. Concurrently, it is probable the Claimant would have followed the example set by his Foreman in order to avoid subsequent work confrontations.

On the other hand, the testimony of the Foreman was at best contradictory. He simply was not credible. In several instances his story varied during questions by the same inquirer. The Board believes he, in fact, demonstrated to the Claimant how to lift the machine head when it became stuck. Beyond that, we think he did so with at least the intent of showing the Claimant how he expected it to be done. Furthermore, even if the procedure is unacceptable by the Carrier, it is apparent that it is a practice among the machine's operators.

After considering all of the above, the Board believes the Claimant is due even more consideration than he was given by the Carrier. He has given many years of good service and even though the Carrier demonstrated a good faith approach, a two (2) day suspension in the face of the Employee's record is more demoralizing than beneficial. It is excessive, if the purpose, as it should be, is to educate the employee and seek a modification in his behavior. In this case, his culpability lies in his intent to do a good job and follow orders, not in any intent to disregard rules and regulations.

AWARD

The suspension issued to the Claimant is to be removed from his record and replaced by sixty (60) demerits. The Claimant is to be reimbursed all wages and benefits lost as a result of the two (2) day suspension.


Carol J. Zamperini, Neutral

Submitted:

June 10, 1988
Denver, Colorado