

SPECIAL ADJUSTMENT BOARD NO. 947

Award No.8
Case No. 8

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, following a formal hearing held at 9:00 A.M. on March 30, 1983, at the office of Regional Engineer, 610 South Main Street, Los Angeles, California, they advised Mr. J. T. Arrelano, Foreman, Extra Gang #31, by letter dated April 8, 1983, that he was suspended from service without pay for allegedly violating Rule G of the Rules and Regulations for the Maintenance of Way and Structures, said action being without merit since the Company did not meet its burden of proof in this case.
2. That the accused be exonerated of all charges, allowing him to return to work, seniority unimpaired and compensated for all loss of time, that to include any overtime that he might have missed out on and that his personal record remain free of any such charges as a result of this hearing.

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.

At approximately 2:05 P.M., on March 17, 1983, Henry Z. Wagner, General Manager/Auditor, Harbor Belt Line Railroad, accompanied by Harry Simpson, Chief Special Agent, was driving in a Company car on Alameda Street, when they noticed Extra Gang #31, from the Southern Pacific Transportation Company, doing work on a tail track to the auto dock. Unaware of the reason they would be working in that area, Mr. Wagner decided to inquire. He approached the Company truck and noticed, the foreman, Mr. Arrelano, standing on the ground and Mr. Garcia sitting in the truck both with a beer can in their hand. When the two men saw Mr. Wagner, first Mr. Garcia dropped his can behind the seat and then took Mr. Arrelano's can and dropped it behind the seat. When Mr. Wagner asked the men about the beer, they both denied ever having it or knowing anything about it. Mr. Wagner removed the cans from behind the seat and set them on the running board. He noted that both cans were cold and that one was nearly empty while the other was three-quarters full. He then arranged to have Don DeFord, District Maintenance of Way Manager, come to the area. When Mr. DeFord arrived, Mr. Wagner told him he had observed Mr. Arrelano and Mr. Garcia with beer in their possession, at which time he showed Mr. DeFord the two beer cans. After discussing the situation with Mr. Wagner, Mr. DeFord removed the two men from service and took them to his office in Dolores. He told them to check with him at 7:00 A.M. the next day to see if they were to return to work. On the following day, Mr. DeFord advised the men they were removed from service pending a hearing on violation of Rule G.

In a letter dated March 24, 1983, the two men were notified of a formal hearing which was to be held on Wednesday, March 30, 1983. The letter went on to say:

You are charged with violations of Rule "G" of the Rules and Regulations for the Maintenance of Way and Structures, that portion reading as follows: . . . "

No one checked the two men the day of the alleged incident to determine if their breath smelled of beer nor were they given any kind of chemical test to determine the alcoholic content of their blood. Rather their supervisor, Mr. DeFord testified he was not interested in testing for intoxication because he believed neither man was intoxicated. He stated he was really concerned about that portion of Rule G which forbids possession of alcohol on Company property during work hours. He related that was the reason for the suspension of the two men.

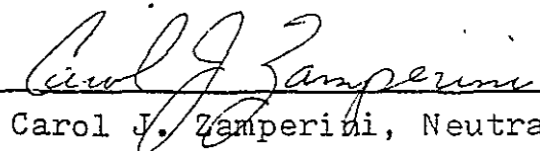
It is not infrequent that credibility is the issue in discipline cases. In the instant case, the Grievants denied any knowledge of the beer and Mr. Wagner testified to having seen both men with beer in their possession. Unless it can be shown a Supervisor or other "management" employee is acting from some bias or prejudice against an employee when he makes allegations about misconduct, it is usually accepted that the Supervisor has nothing to gain by lying. Grievants, on the other hand, have a great deal to gain by remembering the facts other than as they occurred. I believe that is what happened in this matter. The

two men had beer in their possession. Perhaps the most convincing element in the transcript was when Mr. Arrelano stated on the stand, ". . . . Somebody hollered, Mr. Wagner was coming." I am certain that under normal circumstances no one would feel compelled to alert everyone to an approaching Supervisor. The fact the beer was cold, supported not only by Mr. Wagner's testimony, but by Mr. Simpson's, who described the condensation on the cans, was an indication that the cans had been there only a very short time. The conclusion has to be, therefore, the men were guilty of the infraction.

A violation of Rule G is a serious one, especially in light of the strenuous and potentially dangerous work involved in the Railroad Industry. No person, particularly a Foreman, should take a chance in affecting his judgement by utilizing alcoholic beverages while on the job.

AWARD

Claim denied.


Carol J. Zamperini, Neutral

Submitted:
July 7, 1984
Denver, Colorado