

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - G. W. Privett
Award No. 80
Case No. 80

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 fifteen (15) 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.

On July 5, 1988, the Claimant, G. W. Privett, was operating a truck, loading and unloading equipment, near Gerber, California. His crew, Extra Gang 7, was replacing rail. When

he finished unloading his truck near the end of the job, he picked up a spike mall and began spiking. He did not put on safety glasses. According to his testimony, the spike mall was loose and he tapped the handle on a rail to tighten the head. As he swung the mall onto a spike it vibrated and the head glanced off the spike onto the rocks. A rock flew up and hit him in the eye causing a severe laceration. The crew rushed him to St. Elizabeth Hospital at Red Bluff. Subsequently, he was taken to an eye specialist who in turn advised him to go to the hospital in Sacramento. He was transported there by his wife.

On July 25, 1988, he was notified to be present at a formal hearing on August 9, 1988 to determine if he had violated the following rules of the Maintenance of Way and Structures:

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. . .

Rule 1(B) of Safe Work Practices: . .
.Safety glasses with side shields furnished by the Company must be worn while on duty where required.

By letter dated September 1, 1988, the Claimant was

notified the Carrier believed the evidence at the hearing supported the charges and suspended him for fifteen (15) days.

The Claimant was very honest in his testimony. He, along with others, have neglected to wear their safety glasses when the job only required a few swings of the hammer (mall). Typically, that is the attitude most of us seem to have when we try to accomplish things hurriedly. Instead of doing what we know is at least an ounce of prevention, we move forward to get the task completed. We envision ourselves invulnerable. All too often, as in the instant case, this leaves us injured.

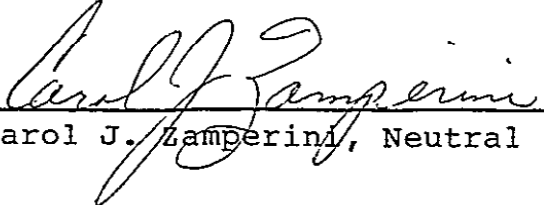
The question is not whether the Claimant violated the rules cited. Clearly he did. The determination the Board has is whether the punishment fit the crime. While in many cases the answer would be the affirmative, that may not be true in this case.

The Claimant has fifteen years of service with the Carrier. While that may not be a lengthy tenure on the railroad, it is in most industries a good deal of service. Certainly it is enough time to determine whether an employe is a good employe or not. In this case, we have a good employe. He has no other injuries and no other disciplinary actions on his Employment Record. Admittedly, if he has failed to wear his safety equipment in other instances and has come away injury free, he is a lucky employe, as well as, a good employe. At any rate, because of his fifteen years of employment without either disciplinary or injury notations, the Board believes fifteen (15) days is too harsh for the first proven offense. This Board is inclined to

reduce the penalty, but the Claimant should be aware, he has been put on notice to follow safety rules to the letter. His failure to use safety equipment in the future will probably result in a more severe penalty.

AWARD

The fifteen (15) day suspension is to be reduced to a seven (7) day suspension.


Carol J. Zamperini, Neutral

Submitted:

January 30, 1989
Denver, Colorado