

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - M. A. Sargent
Award No. 83
Case No. 83

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 assess Claimant forty-five (45) demerits 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 the morning of August 22, the Claimant approached his Roadmaster, Mr. Frates, and explained he was not feeling well. Mr. Frates suggested he see a doctor and indicated he would not allow him to work since one of his symptoms was dizziness. The

Claimant was also told it would be necessary to get a release from the Company doctor before he would be permitted to return to work. The Claimant did not mention that he had seen a doctor, nor did he suggest his illness was the result of a work related injury.

On September 1, 1988, the Roadmaster received a call from Mr. Drake who informed him that he had just received a 2611 from the Claimant. The date listed as the day of the alleged injury was August 21, 1988, a Sunday. After an investigation, the Roadmaster determined the Claimant had not been working on August 21, 1988. Since, Mr. Sargent had not mentioned any work related injury previously and because he was not working on August 21, 1988, the Carrier charged him with several rule violations and directed him to be present for a formal hearing held on September 14, 1988 at the office of the Roadmaster. The rules the Claimant allegedly violated were:

Rule 607 - CONDUCT: Employees must not be:

- (3) Insubordinate;
- (4) Dishonest;

Indifference to duty, or to the performance of duty, will not be condoned.

Rule 621, reading:

Rule 621. FURNISHING INFORMATION:
Employees must not withhold information, or fail to give all the facts, regarding irregularities, accidents, personal injuries or rule violations.

Rule E, reading:

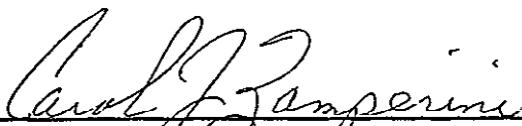
Rule E: Accidents, personal injuries, defects in track, bridges or signals, or any unusual condition which may affect the safe and efficient operations of the railroad, must be reported by the first means of communication. Written report must follow promptly when required.

The Board believes the Claimant is responsible for creating a highly suspicious situation. Certainly if he had been to the doctor on Sunday, August 21, 1988, it was his responsibility to at least share that information with his Roadmaster when he spoke with him the following day. His failure to do so, at least casts suspicion on his alleged injury. Although he testified he made several attempts to contact Mr. Frates between August 21, 1988 and September 1, 1988, in reality he spoke with him on August 22, 1988. It was then he should have informed the Roadmaster of his contact with the doctor and the possibility of a job related injury. His failure to do so was an error on his part.

While the Board does not believe the Carrier has satisfactorily proven all the charges against the Claimant, it does believe the Claimant was guilty of not furnishing information in a timely manner. The penalty issued in this case, forty-five (45) demerits was not excessive.

AWARD

The Claim is denied.



Carol J. Zamperini, Neutral

Submitted:

January 31, 1989
Denver, Colorado