

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - C. D. Naylor  
Award No. 85  
Case No. 85

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 five (5) 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 injured his back while lifting ties with a bar. The only witness to the injury was the Claimant himself. The incident occurred on June 30, 1988 while a crew was working

near MP 427.6 at Klamath Falls, Oregon. The Claimant filled out a 2611 on the same date.

By letter dated August 8, 1988, the Claimant was charged with several rule violations and asked to report to a formal investigation to be held in Klamath Falls, at 9:00 a.m., on August 23, 1988. At the request of the Claimant, the hearing was postponed indefinitely because he was recovering from back surgery. It was finally held on October 6, 1988, but the Claimant, for reasons only known to him, did not attend.

The Carrier believed the evidence at the hearing was sufficient to prove the Claimant had violated Rules A, I, and 607 of the Rules and Regulations of the Maintenance of Way and Structures; those sections of the rules which read:

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. . . .

While the Board believes it was unfortunate that the Claimant did not attend the investigation, it finds no reason to draw a negative inference. The Carrier has brought the charges and it is their responsibility to prove their case. Unfortunately, the Claimant was the only witness to the incident

which caused the injury. Even the Claimant's Foreman was working elsewhere when the Claimant claims to have been hurt. Since the Claimant was examined by a doctor right after the occurrence, there is nothing to indicate the injury wasn't real.

The witnesses at the hearing were unable to confirm that the Claimant did not "obey the rules essential to safety". Nor could anyone testify the Claimant did not exercise care or was careless. While one could speculate the Claimant did not take enough care, there are no witnesses to support such a contention.

Since there is no evidence against the Claimant which supports the charges brought by the Carrier, the Claim is upheld.

AWARD

The Claim is sustained. The Carrier is to compensate Claimant for any and all loss of earnings suffered, and these charges are to be removed from his record.

  
Carol J. Zamperini, Neutral

Submitted:

February 16, 1989  
Denver, Colorado