

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - R. H. Cross
Award No. 87
Case No. 87

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 thirty (30) 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 is a Track Laborer. On January 24, 1989, he was working on Extra Gang 16, when he was asked by his Foreman to get some tools out of a truck. According to the Foreman's

which was substantially supported by the testimony of a co-worker, the Claimant asked the Foreman why he didn't get the tools himself. After which there was a verbal exchange and the Claimant called the Foreman a "motherfucker", an "asshole", and a "son-of-a-bitch". The Foreman called a supervisor to explain what had happened and was told to send the Claimant home.

As a result of the incident, the Claimant was advised to report for a formal investigation to determine his guilt in the matter. The charge letter indicated the hearing was to determine whether or not he had violated Rule 607 of the Rules for the Government of Maintenance of Way and Structures and Engineering Department. Those sections which read:

Rule 607: CONDUCT: Employees must not be:
 (3) insubordinate;
 (6) quarrelsome;

Any act of hostility, misconduct or willful disregard or negligence affecting the interest of the Company is sufficient cause for dismissal. . . .

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

Courteous deportments is required of all employees in their dealings with the public, their subordinates and each other. Boisterous, profane or vulgar language is forbidden.

Following a review of the evidence presented at the hearing, the Claimant was suspended for thirty (30) days.

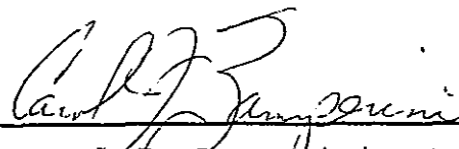
The Claimant's testimony was less than credible. For one thing, the Claimant contends the Foreman was harrassing him, but the evidence shows he was merely giving a reasonable directive.

Also, the Foreman's version of the incident was supported by the testimony of a co-worker. Whereas, the testimony of the Claimant was by its nature, self-serving and less than forthright.

Finally, the Claimant's Employment record, while not valid in proving the current charges against the Claimant, certainly give cause to examine the credibility of the Employee in this matter. He has, on several occasions demonstrated an unwillingness to comply with directives and/or an inability to control his aggression. At the very least, the record shows a propensity for the type of behavior the Claimant is accused of here. This along with the testimony of the Foreman and the co-worker, supports the action taken by the Carrier.

AWARD

The Claim is denied.


Carol J. Zamperini, Neutral

Submitted:

November 27, 1989
Denver, Colorado