

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - T. J. Miller
Award No. 89
Case No. 89

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 nine (9) 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 Water Service Mechanic in the Carrier's Water Service Sub-department. On April 5, 1989, the Claimant, along with other workers in the department were installing an

air line. At some point while carrying pipe which was to be installed in a ditch, the Claimant allegedly twisted his back. The Claimant mentioned this to a co-worker, but he did not say anything to a supervisor. One of his supervisors heard the Claimant calling his chiropractor around 11:30 a.m., but did not inquire as to the reason. When his supervisor was advised that the Claimant had hurt his back, he questioned him in an attempt to ascertain whether it was true and, if so, what had happened. The Claimant contended he was not certain at first that he had obtained a serious injury. Instead he thought he may have thrown his back out which frequently happened. Therefore, he called his chiropractor thinking an appointment would rectify the damage. He also told the supervisor he was reluctant to report the accident until he was sure it was serious because he was concerned about the possible consequences.

As a result of this incident the Claimant was sent a charge letter. He was told to report for an investigation on May 16, 1989, at the Sacramento Locomotive Works to establish his responsibility, if any, in violating Rules I, E, and 1.126 of the Southern Pacific Transportation Company's Maintenance of Way and Structures Rules which read in part:

Rule I: Employees must exercise care to prevent injury to themselves or others. They must be alert and attentive at all times when performing their duties and plan their work to avoid injury.

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

Rule 1.1.26: Employees must not carry tools, material or other objects which would prevent secure handhold or interfere with safe movement when climbing on or off equipment or objects.

Following a review of the evidence presented at the hearing, the Claimant was suspended for a total of nine (9) days for violating the above rules.

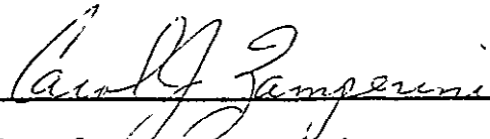
The Board has reviewed the Employment Record of the Claimant and finds he has an excellent record, as far as, disciplinary actions are concerned. He has been employed since October, 1970. During that time, he has had two discussions relative to rule violations. While his injury record is not unusual, the Board does appreciate a possible concern on the part of the Carrier that the Claimant has experienced an increased frequency in the number of accidents and/or injuries he has sustained in the last four or five years. While many jobs on the railroad subject employees to constant dangers, the jobs performed by the Claimant would not generally place him in such a circumstance. That being the case, it is not unreasonable for the Carrier to expect him to exercise a greater degree of caution in his every day performance.

The problem with the nine (9) day suspension issued here by the Carrier is two-fold. First, in order to convince the Claimant to share his story with supervision, a supervisor indicated the matter would not go further than their discussion. While the Supervisor may have had something else in mind, the effect was to cause the Claimant to believe he was assured some type of immunity. In the end, this fact alone may not have

changed the outcome, but it certainly was inappropriate. Secondly, the Claimant has a very fine record. Certainly he should be forewarned to be more cautious and to report his injuries in a timely manner, this should be accomplished by the use of progressive discipline. A lesser penalty should be used before the more stringent one. The Board believes the Carrier issued a more severe penalty than may have been called for under the circumstances, especially since there is nothing to show that a lesser penalty would not have had the same effect.

AWARD

The nine (9) day suspension issued to the Claimant is to be reduced to a three (3) day suspension. He is to be reimbursed any wages and/or other benefits lost in excess of this amount.



Carol J. Zamperini, Neutral

Submitted:

November 29, 1989
Denver, Colorado