

SPECIAL ADJUSTMENT BOARD NO. 947

Award No.9
Case No. 9

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Southern Pacific Transportation Company (Western
Lines)

STATEMENT
OF CLAIM

1. That the Carrier violated the provisions of the Agreement when, after a formal hearing held on June 16, 28, 29, and 30, 1983, they suspended Mr. Severo Oliverrez for a period of thirty (30) days, effective August 9, 1983 - September 7, 1983, for allegedly violating Rule 13 of the Rules for the Safe Operation and Care of Automotive and Trailer Equipment of the Southern Pacific Transportation Company; said action being excessive and unjust.
2. That all charges against Mr. Oliverrez be dismissed, his record cleared, and he be compensated for any time lost as a result of these charges.

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 the arbitrator being sole signatory.

On April 4, 1983, Mr. Severo Oliverrez was assigned to transport Speedswing SPO-239 from Suisun to Cresta. He used two long

chains and two chain binders to secure the Speedswing onto a tiltbed trailer, which was hooked onto dump truck W-739. Around 8:14 A.M., while enroute, in the vicinity of MP 53.0 near Suisun, one of the chains broke causing the Speedswing to roll off the trailer and land upside down on the roadway. When the Speedswing rolled off the trailer, the front of the trailer tipped up which in turn lifted the back wheels of the truck. Consequently, Mr. Oliveriez, the driver lost control; the trailer jackknifed and the truck overturned. Mr. Oliveriez and one of the two passengers with him in the truck were slightly injured. The total damage to the equipment was in excess of \$10,000.00.

The Company said nothing to Mr. Oliveriez regarding the accident until June 6, 1983, when he was handed a letter which notified him of a formal hearing which was to be held on June 16, 1983. The hearing was set up to determine if the accident on April 4, 1983 resulted from his negligence in violation of Rule 13 of the Rules for the Safe Operation and Care of Automotive and Trailer Equipment of the Southern Pacific Transportation Company.. Subsequent to the hearing, Mr. Oliveriez was found responsible for the accident because he had failed to secure the Speedswing to the trailer in a proper manner.

The Company claimed the driver was responsible for making sure he had the right chains for the job. Instead of having heat treated chains he had regular chains. The Company witnesses also testified that it would have been preferable to use four

chains instead of the two chains used by Mr. Oliverrez. Two heat treated chains could have been used if secured properly to the axle of the Speedswing. This was especially necessary since there were no hooks on the Speedswing to attach to. Therefore, the chains should have been placed through the front and rear D rings on the trailer and then around the differential housing (large axle) on the Speedswing, attaching the left front housing to the left front D ring on the trailer with the other three ends attached to their respective front and rear corners. Instead Mr. Oliverrez, attached the chains to the center D rings on both sides of the trailer. He did not properly secure the chain around the axle, therefore when one of the chains broke, the Speedswing worked loose and rolled off the trailer. The driver also failed to use the required four chain binders. Instead he used just two. The Grievant in response testified he had used the chains given to him by his Supervisor, Mr. Flores and the only reason for the accident was the fact the chain broke. Otherwise, he had properly secured the Speedswing. He also testified that someone was always taking his chains and his request for chains was always denied instead he was directed to look for additional chains in other trucks.

Quite frequently in cases such as this, no one becomes upset until something happens. It would appear Mr. Oliverrez's Supervisor was aware of the type of chains used by the Grievant. He had some responsibility to be sure the chains issued the employee were up to specifications. In all probability the type

of chains used resulted in one of the chains breaking which caused the accident. Even the report of the CHP Officer indicated that to be the case. However, there is no indication the Grievant ever protested the type of chains he was issued nor is there evidence he attempted to obtain four shorter heat-treated chains which would have secured the Speedswing more efficiently. Instead, using two long chains, he tied down the Speedswing in the same manner he may have secured things in the past not expecting any difficulties. Evidence suggests that if the chains had been properly secured around the axle of the Speedswing, the Speedswing would have stayed in place even if one end became loose. The same would probably have been true when the chain broke. It appears Mr. Oliveriez did not properly stabilize the Speedswing onto the trailer. As a result, when the chain snapped, the Speedswing shifted.

Management must share at least some of the responsibility in not assuring that the type of chains issued met the proper specifications. The Supervisor also erred in the lengthy delay in questioning Mr. Oliveriez and raising the issue concerning his possible responsibility in causing the accident. This type of delay is unfair to the employee and could conceivably interfere with his ability to present an adequate defense of allegations brought by the Company.


Taking all the above into consideration, I believe the penalty issued to Mr. Oliveriez was excessive.

AWARD

The claim is sustained in part; the penalty issued to Mr. Oliveriez is to be reduced to fifteen (15) days; he is to be reimbursed for any time lost, as a result of this incident, in excess of this amount.

ORDER

The Company shall comply with the Award herein within thirty (30) days from the date hereof.



Carol J. Zamperini Neutral

Submitted:
Denver, Colorado
July 17, 1984