

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - A. Santa Cruz
Award No. 95
Case No. 95

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 dismiss Claimant, A. Santa Cruz from its service 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 reinstate and 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 February 12, 1988, Claimant was sent a charge letter directing him to appear on February 19, 1988, at the office of the Assistant Division Engineer to determine whether or not he

had violated Rules A, 602, and portions of Rule 607. The charges resulted from an incident on February 10, 1988, while the Claimant was assigned as watchman for Welder R. M. Jorgenson. The Claimant allegedly left Jorgenson unprotected against train traffic near MP 148.3 at Magra, California. The Rules cited read as follows:

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.

The service demands the faithful, intelligent, and courteous discharge of duty.

Rule 602: SLEEPING: Employees must not sleep while on duty. Employees who are in a reclined position with eyes closed will be considered in violation of this rule.

Rule 607: CONDUCT: Employees must not be:

- (1) Careless of the safety of themselves or others;
- (2) Negligent;.

The Carrier considered the evidence adduced at the hearing sufficient to justify the removal of the Claimant from service. They informed him by letter dated February 25, 1988, that he was being dismissed for having vacated his post on February 10, 1988 and for sleeping while on duty.

The Claimant had worked for the Carrier for nearly seven years at the time of his hearing. Subsequent to his employment as laborer, he was promoted to Welder. On the day of the incident, he and Welder Jorgenson were assigned to weld the frog at Magra Crossing. Since Jorgenson was actually performing the weld using an Arc Welder, he had to wear a hood. Coincidentally,

he required protection from oncoming trains and equipment. The Claimant was assigned to provide that protection as watchman. Around 5:00 p.m., the Roadmaster received a call from Jorgenson, who reported that Santa Cruz had gone to sleep on duty instead of providing him with the necessary protection. He further indicated, he had not said anything during or immediately after his shift because he was so shook up and had no idea of what to do. The Roadmaster called the Claimant and Jorgenson into his office for a discussion the next day. According to testimony from both the Welder and the Roadmaster, the Claimant apologized for the incident following that discussion. The Claimant testified that the only reason he apologized was because he realized how upset the Welder was. He further stated that he had not been sleeping on duty and had provided the Welder with the required protection.

While the Claimant denies he was asleep on February 10, 1988, there is sufficient testimony to prove that he was. First, there is no reason to believe Jorgenson would lie. This wasn't even suggested by the Claimant. Jorgenson approached the Claimant while he was in the truck and touched him to see if he was awake. If the Claimant had merely been listening to the radio intently as he claims, he would have responded to this contact. Actually, in all probability, anyone concentrating on something in that manner, would have probably been startled by someone approaching them unannounced. Instead, the Claimant did not even acknowledge the presence of the Welder until he climbed into the cab of the truck and the radio became static.

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The Claimant was afforded a fair and full hearing. He was guilty of violating a very serious safety rule. Not simply because it was a rule violation, but more importantly, even if not intentionally, he jeopardized the safety of another employee. And even though he was not admonished by Jorgenson at the time of the incident, the infraction is so obvious and so serious the Claimant should have realized he was wrong in his failure to keep watch. The Carrier responded appropriately. No one is willing or should be expected to work with a co-worker who would put them at risk by not doing what they are supposed to do.

AWARD

The claim is denied.

A handwritten signature in cursive script, reading "Carol J. Zamperini", is written over a horizontal line.

Carol J. Zamperini
Neutral

Submitted:

January 23, 1990
Denver, Colorado