

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - J. Anzo, Jr.  
Award No. 97  
Case No. 97

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, J. Anzo, Jr. 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.

At the request of the Claimant, his Roadmaster, David Holleman agreed to allow him to be qualified on the burro crane. He was qualified to operate the equipment by Lead Operator,

Kenny Songers who worked out of Sacramento. He was qualified by Mr. Songers in less than a day. He operated the crane approximately one year prior to the accident.

On August 7, 1989, the Claimant was assigned to work with the work train. He went on duty at 7:00 a.m. at Dunsmuir, California. He went off duty at Dunsmuir at or near 6:00 p.m.. At approximately 4:50 p.m., he was attempting to lift ribbon rail from the center of the track. As he approached a curve, the weight he was lifting proved too great and the crane and flat car upon which it sat shifted and the crane flipped off the flat car into a small creek.

Following this incident, the Claimant was issued a charge letter advising him to appear at a formal investigation held at the office of the Trainmaster at Dunsmuir, California on September 12, 1989. The hearing was to determine whether or not he had violated Rules 2.14.1 and 2.14.11 of the Chief Engineer's Instructions for the Maintenance of Way and Structures, those portions which read:

Rule 2.14.1: The crane operator is responsible for the safe operation of his crane. Only authorized personnel shall enter the crane cab. This equipment can be dangerous if improperly operated or maintained. The crane should only be operated and maintained by trained and experienced people who have read, understood, and will comply with the operator's manual

Rule 2.14.11: Operator must know the rated capacity of the crane in the various radiuses, keeping in mind that the radius is measured from the center of rotation - not from the boom foot pin (see illustration).

It was determined from the testimony at hearing that the

Claimant was guilty of the cited rule violations. He was suspended for a period of five (5) days effective October 9 through October 13, 1989.

According to the testimony of at least three witnesses the Claimant was never given proper instruction in the operation of the burro crane even though he had been qualified. This Board is swayed by this testimony, particularly in light of the fact, that two of the witnesses are supervisors, one of whom is an expert in the operation of cranes. It hardly seems fair to assess responsibility to an individual who having been told he qualifies finds himself in a situation he had no reason to anticipate. While experience may be the best teacher, there is a necessity to provide a substantial foundation upon which someone can build that experience. This Board does not believe the Claimant was given that opportunity. Instead, he was told he could operate the equipment without being forewarned of the weight requirements, the existence of an operating manual, or without being properly quizzed on potential problems. And even if the manual had been provided, the Carrier's witness, Mr. Anderson, who is an expert on crane operation, testified that it is very difficult to read the manual and relate the instructions to the actual operation of the crane unless instruction and guidance are simultaneously provided. That being the case, it is hardly appropriate to hold the Claimant totally responsible for failing to adequately judge the acceptable weight he could lift with his crane, especially since the Employee was not lifting the ribbon rails high off the ground, but merely enough

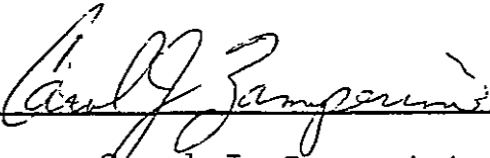
for them to clear the attached rails.

The Board appreciates there was a great deal of damage to the crane. And if the crane operator had been adequately trained and, along with that training, had enough experience, we would be in agreement that the five (5) day suspension was not only in order, but very reasonable. However, under the circumstances, it is difficult to place the responsibility of the accident solely at the Claimant's feet. He simply did not have enough training to be aware of the possibility the weight of the rails would be too great to maintain the balance of his crane. The person who qualified the Claimant without assuring he was properly trained was more to blame for what happened than the Claimant.

In addition to the above rationale, the Claimant's Employment Record has to be considered exceptional, with little evidence of any previous discipline and two commendations.

#### AWARD

The claim is sustained in part; the five day suspension is to be rescinded and replaced with thirty (30) demerits; the Claimant is to be reimbursed any wages lost as a result of the five (5) day suspension. In addition, the Claimant is to be provided additional training on the burro crane and is to be appropriately tested on the weight specifications, including load limits and radiuses.

  
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Carol J. Zamperini  
Neutral

Submitted:

December 27, 1989  
Denver, Colorado