

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - R. Ozuna, Jr.
Award No. 99
Case No. 99

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

That the Carrier's decision to assess Claimant forty (40) demerits 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 remove the demerits assessed and clear his personal record of the charges placed thereon.

FINDINGS

Upon reviewing the record, as submitted, I find that the Parties herein are Carrier and Employes 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.

Claimant, R. Ozuna, a Truck Driver for the Carrier, was notified by letter dated September 6, 1989 to appear for a formal investigation to determine whether he had violated Rules I, 607 of the Rules and Regulations for the Maintenance of Way

and Structures of the Southern Pacific Transportation company and Safety Rule 13 of the Rules for the Safe Operation and Care of Automotive and Trailer Equipment, BP-580. The portions of the rules cited included:

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 607: CONDUCT: Employees must not be:

(4) dishonest;. . . .

Safety Rule 13:

When vehicles are left unattended:

(a) Motor must be stopped.

(c) Parking or hand brake must be securely set.

(e) Vehicle must be placed in lowest possible gear, reverse if headed downhill, low if headed uphill (if vehicle has two-speed rear axle it must also be placed in low gear), and in cases requiring extreme caution, wheels must be securely blocked.

The hearing was held on September 18, 1989, at the office of the Assistant Division Engineer in Bakersfield, California. The Carrier reviewed the evidence brought forth at the hearing and determined that the Claimant had violated Rule I of the Rules for the Maintenance of Way and Structures and Safety Rule 13 of the Rules for the Safe Operation and Care of Automotive and Trailer Equipment, BP-580. They assessed the Claimant's record forty (40) demerits.

On the day of the incident, the Claimant drove his truck to

the work cite. He parked the truck on an incline, got out of the truck only to return a few seconds later to switch the key to auxillary so the radio could be used. He then walked around outside the truck and made his way to the passenger side. As he did so, he noticed the welder and his helper arriving. They parked their truck at an angle behind his truck. He walked towards them asking them how much work they had to do that day. He had hardly asked the question, when the welder yelled, "Look out, look out". He turned in time to see his own truck rolling towards him. He was pinned between the two trucks. His foreman, who had been sitting on the passenger side of the truck managed to get to the driver's side, eventually started the truck and pulled it away from the Claimant. Co-workers assisted the Claimant to another worker's truck and he was driven to the hospital.

The accident was investigated that same day. The main question was whether the Claimant had properly set the hand brakes on his truck. There was no direct testimony that the Claimant had failed to set his brakes, although there was a good deal of circumstantial evidence which seemed to indicate the Claimant had not set the hand brakes properly before getting out of the truck. Most of the circumstantial evidence centers around tests which were conducted on the trucks brakes shortly after the accident. When the brakes were set, no one could get the truck to move backwards, even if they put it in reverse and attempted to power it back. However, if the hand brake was disengaged and the truck placed in third gear, it would move

backwards after a few minutes.


This Board must look at that circumstantial evidence in view of the testimony of the witnesses. With the exception of the Claimant, none of the witnesses were sure whether or not the hand brake had been set. The Claimant on the other hand, at least at the hearing, was absolutely sure he had set the hand brake. And yet, the evidence suggests he was not as certain the day of the incident. In order to support his testimony at the hearing, he also claimed he had been parked on the incline for at least fifteen (15) minutes, but his recollection on this matter is simply not supported by any of the other witnesses. If he could not accurately recall this aspect of the incident, it is conceivable he could not remember whether or not he had set the hand brakes on the day in question. Even though we all may tend to do certain things automatically, such as set emergency brakes on cars, there is no 100% guarantee that we will do it every time. That is often how accidents happen. Human beings cannot promise perfection.

The Claimant has an outstanding record. This Board believes he has demonstrated he is a very fine truck driver. Unfortunately, we believe the circumstantial evidence taken with the testimony of all witnesses indicates he forgot to set the hand brakes on his truck the day of the accident. The penalty issued is not unreasonable.

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AWARD

The claim is denied.



Carol J. Zamperini
Neutral

Submitted:

January 29, 1990
Denver, Colorado