

SPECIAL ADJUSTMENT BOARD NO. 18
(Train Service Panel)

PARTIES TO DISPUTE: United Transportation Union-Trainmen
Southern Pacific Transportation Company
(Western Lines)

STATEMENT OF CLAIM: "Request of Conductor Nordene F. Peck, Sacramento Division, for replacement of wage loss and productivity credits resulting from his suspension from service for 30 days from June 25, 1991, to July 24, 1991, inclusive. Included herein, is our request for reimbursement of wage loss and productivity fund credits for attending formal investigation on July 10, 1991. In addition, we request that all references to this matter be expunged from Conductor Peck's personal record.

"Conductor Peck was suspended from service for alleged violation of Rules 1007 and 1003 of the Southern Pacific Lines, Safety and General Rules for All employees, Southern Pacific Transportation Company, effective April 15, 1991. These charges are generated by an alleged incident asserted to have occurred on or about June 5, 1991."

STATEMENT OF FACTS: On June 29, 1991, the Carrier directed the following notice to the Claimant, along with two other employees:

"You are hereby notified to be present at the office of the Trainmaster, 1600 Vernon St., Roseville, California, at 9:00 A.M., Friday, June 28, 1991 for formal investigation to develop the facts and place responsibility, if any, in connection with you allegedly wearing white hoods and burning a cross in the presence of Mr. Lloyd Gaynor Jr, M of W employee, in the vicinity of Floriston, Milepost 219.5, on or about June 5, 1991 at approximately 11 AM.

For the above occurrence you are hereby charged with responsibility which may involve a violation of Rule 1007, that part reading:

'1007. CONDUCT: Employees must conduct themselves in such a manner that their Company will not be subject to criticism or loss of good will.

'Employees will not be retained in service who are . . . quarrelsome or otherwise vicious, or who conduct themselves in a manner which would subject the railroad to criticism. Any act of hostility, misconduct

or willful disregard or negligence affecting the interests of the Company is sufficient cause for dismissal and must be reported. Indifference to duty, or to the performance of duty, will not be condoned. Courteous deportment is required of all employees in their dealings with the public, their subordinates and each other. Boisterous, profane or vulgar language is forbidden.

'Employees must be conversant with and adhere to the Company's Affirmative Action Policy. Instances of discrimination or sexual harassment must be reported and if substantiated, may result in disciplinary action up to and including dismissal.'

"and rule 1003, that part reading:

'1003. REPORTING VIOLATIONS/CONDITIONS: Employees must cooperate and assist in carrying out the rules and instructions and promptly report to proper authority . . . any misconduct or negligence affecting the interest of the Company.'

"of the Southern Pacific Lines, Safety and General Rules for All Employees, Southern Pacific Transportation Company, effective April 15, 1991.

"You are entitled to representation and witnesses in accordance with your agreement provisions. Any request for postponement must be submitted in writing, including the reason, therefore, to the undersigned."

Subsequent to the investigation, the Claimant was assessed the discipline now on appeal before the Board.

FINDINGS: This Board, upon the whole record and all of the evidence, finds that the Employees and Carrier involved in this dispute are respectively Employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute involved herein.

DECISION: It is undisputed that an incident occurred where at least one employee wore a pillowcase over his head and used a crudely formed cross in the presence of Mr. Lloyd Gaynor, an Afro-American. It is noted that among many of the arguments advanced by the Union is that the incident was a well-intended prank without malicious intent. Indeed, they note testimony that


Mr. Gaynor took it as a joke as did the officer asked to investigate the incident, who also was black.

The Board feels compelled to point out that whether the incident was meant or taken as a joke is not dispositive. The Carrier is obligated under law to provide a work place free from racial harassment and hostility. While Mr. Gaynor may not have been personally offended, the incident, if not addressed, would tend to lead others to believe such behavior was acceptable or at least go unpunished. As knowledge of such an incident would spread among employees, it would easily be subject to misinterpretation and would contribute to an inappropriate work environment. Such behavior is plainly improper, and even if it was intended as a joke, it is subject to discipline.

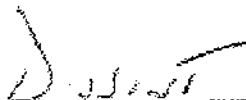
While racial pranks and jokes are inappropriate and subject to discipline even when the object is not offended, this does not relieve the Carrier from its burden to prove the precise charges against the Claimant by way of substantial evidence. The plain fact is that the evidence does not support the charge that the Claimant wore a hood or burned a cross. To the contrary, the evidence indicates that no cross was burned and that only one employee, not the Claimant, wore a pillowcase, imitating, we suppose, a hood.

AWARD

In view that the evidence does not support the charges, the claim is sustained.



Gil Vernon
Chairman and Neutral Member



J. L. Jordan
Carrier Member



D. E. Johnson
Union Member

[Dated this 24th day of May 1995.]

CARRIER'S DISSENT TO DECISION NOS. 6010 & 6011

SPECIAL ADJUSTMENT BOARD NO. 18

Carrier dissents to majority in Decision Nos. 6010 and 6011. While the majority believes that the Carrier did not prove the "specific charges" against the claimants, substantial evidence exists that an event of a racial nature did occur, objected to or not by the involved parties.

Charges are to be specific in nature to the extent that an employee is made aware of the approximate time, place and situation, with the appropriate rules cited which were violated, so that he/she may prepare a proper defense. The claimants presented a proper defense.

In the cases before this Board, it is unrefuted that an event occurred which someone found offensive enough to anonymously report it to Carrier officials. Although the majority believes that the claimants were not guilty of "...wearing white hoods and burning cross..." the claimants were undeniably in violation of Carrier's conduct rules and policies regarding discrimination and/or harassment.

FOR THE CARRIER:

J. L. JORDAN