

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carl B. Stiger, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of Employees' Committee that Peter Pederson, section laborer, Union Yard, Minneapolis, Minnesota, Willmar Division, dismissed April 3, 1941, shall be reinstated into the service with seniority rights unimpaired, and paid for all time lost."

OPINION OF BOARD: During a snow-storm on March 16, 1941, Section Laborers Burton Bjorke and claimant Peter Pederson were assigned to keep three puzzle switches open for traffic in Union Yard, Minneapolis. It was very cold and there was a high wind at the time of the accident, which resulted in the death of Mr. Bjorke. Mr. Pederson was dismissed April 3, 1941. On August 14, 1941, the carrier because of Mr. Pederson's previously good record offered to reinstate him without compensation for time lost. This offer was rejected.

The men were instructed to work as a pair, to stay and work together and watch for engines and place themselves so one could look in one direction and the other in the opposite direction. This rule, of course, was for the protection of the men.

About seven o'clock in the morning they were working on the West Bound puzzle about forty feet apart. Pederson, without notifying Bjorke, left his work on the West Bound puzzle and walked southwest sixty feet to the East Bound puzzle to sweep the snow out of the switch points to enable the switchtender to throw that switch.

Pederson testified that he thought Bjorke would follow him to the East Bound puzzle "when he got through." Pederson admitted that the Section Foreman instructed him and Bjorke to "always work together," and that it was imperative for section men to work together.

It does not definitely appear that Bjorke ever knew Pederson had left the West Bound puzzle.

About the time Pederson reached the East puzzle, Bjorke stepped to the north side of the West Bound puzzle track to avoid a West Bound drag train. A minute or two later Bjorke was struck by an East Bound light Diesel Engine moving at a speed of about five or six miles per hour on the switch lead puzzle and instantly killed.

There is direct testimony that immediately prior to the time Mr. Bjorke was hit by the engine approaching from the West he was facing East and was standing at the North rail of the switch lead puzzle "as though he was about to go to work."

Unquestionably, Mr. Pederson violated his instructions and the unfortunate accident occurred at a time they were being violated. A careful reading of the transcript of the evidence convinces us that the contention of the employes that the investigation clearly absolved Pederson from blame, from all responsibility for the accident, cannot be sustained. It may safely be said that had the instructions been obeyed it is quite possible the accident would not have occurred.

But the inquiry in this case is not whether Mr. Pederson was responsible for the death of his fellow worker; the question is whether this Board has authority, under the circumstances, to interfere in the internal affairs of the Management and set aside the dismissal induced by an infraction of the rule promulgated for the safety of the employes.

Responsibility for the safe operation of its system and the safety of its employes rests on the carrier. This Division has frequently held that it should not question the propriety of discipline meted out to employes or a dismissal, unless the record shows the carrier acted in bad faith, arbitrarily, and without just cause. We have no hesitancy in holding that there is no such showing in this dispute. An order for reinstatement would constitute an unwarranted encroachment on the power to discipline or dismiss lodged in the carrier by the agreement.

In Award No. 1497 this Division said:

"It is not the function of this Board to review the judgment of the Management in a case of discipline. We can set aside the action taken only where it is so clearly wrong that we can say there has been an abuse of discretion."

See Awards Nos. 135, 232, 280, 373, 419, 891, 892, 954 and 1310.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the record discloses a reasonable basis for the dismissal.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of March, 1942.