

Award No. 32
Case No. 68

Public Law Board No. 2363

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Louisville and Nashville Railroad Company

STATEMENT
OF
CLAIM:

1. The dismissal of Welder R. G. Wyatt and Welder Helper R. O. Beach was without just cause and excessive.

2. Welder Wyatt and Welder Helper Beach shall be reinstated to their respective positions with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

Late in the afternoon of October 3, 1978, a tragic incident occurred at a road crossing near McGhee, Tennessee. While backing up the truck he was operating in the course of track operations, Claimant Wyatt struck another truck that was in position there. A welder helper working at the

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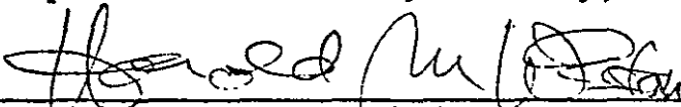
rear of the other truck was pinned between the two vehicles and fatally injured.

Carrier found that claimant Wyatt as well as Welder Helper Beach, who was assisting Mr. Wyatt at the time, were responsible for the accident. There is evidence in the record that supports its conclusions in that regard. The road in the truck's path was straight and visibility was unobstructed and good. There is some indication that the truck was proceeding backward in excess of the 10 mph maximum prescribed by the operating rules. The finding that the two men in the truck should have been able to avoid the accident does not appear to be unreasonable.

However, the fact that a very serious accident occurred does not necessarily mean that such extreme disciplinary action as dismissal is appropriate. It is our view that claimants should be reinstated promptly with seniority rights unimpaired but no back pay. The resulting long suspension without pay will emphasize the importance of operating vehicles with all due care.

AWARD: Claimant reinstated without back pay. To be effective within 30 days.

Adopted at Louisville, Kentucky, DECEMBER 22, 1980.


Harold M. Weston, Chairman


Carrier Member


Employee Member