

PUBLIC LAW BOARD NUMBER 3445

Award Number: 14
Case Number: 14

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Track Laborer, Ernest Reese, Route 1, Box 448, Harrison, Georgia, 31035, was dismissed from service for allegedly being responsible for truck accident on October 26, 1982. Employees request pay for all time lost, with seniority and all other rights unimpaired.

FINDINGS:

On the morning of October 26, 1982, Assistant Supervisor G.A. Burke met Claimant in Tennille, Georgia. The two men planned to proceed to Mile Post 598 and test switches from there back to Tennille. At approximately 7:45 AM, they set out from Tennille, heading east. At Burke's request, Claimant drove their truck, Carrier Vehicle No. 78603.

At a point 1.3 miles west of Bartow, Georgia, a disabled farm truck had been pulled partly off of the road. The rear of the farm truck extended approximately two feet, three inches into the eastbound lane of the highway.

Claimant and Burke approached this location at approximately 8:15 AM. The Carrier vehicle, with Claimant driving, struck the rear of the farm truck at a speed of approximately 55 m.p.h., according to the report of the Georgia Highway Patrol. Burke was killed in the accident, and Claimant received bruises and a head injury.

As a result of this incident, an investigation was held in order to determine Claimant's responsibility, if any, in connection with the accident. On the basis of the evidence adduced at the investigation, Carrier determined that Claimant had caused the accident by handling the truck in a negligent manner. Claimant was dismissed from service on December 30, 1982.

The Organization filed a claim protesting Carrier's actions and requesting that Claimant be reinstated to service with seniority and all other rights unimpaired and with pay for all time lost. The claim was denied at all levels of appeal on the property, and the Organization then submitted the matter to this Public Law Board for resolution.

The issue to be decided in this dispute is whether Claimant was dismissed for just cause; and if not, what should the remedy be.

The Georgia Highway Patrol report of the accident stated that the farm

truck was visible for approximately seven-tenths of one mile to traffic approaching it from the east. Division Engineer J.A. Patton, who investigated the accident examined the scene on the day following the accident and in his testimony confirmed that the farm truck would have been visible to approaching traffic for a distance of seven-tenths of one mile. While there is some evidence that the weather may have been hazy or cloudy, and that the sun may have been shining in Claimant's eyes, there is no evidence that the disabled truck was not visible to Claimant. In fact, Claimant stated that he saw the farm truck but was unable to avoid it due to oncoming traffic.

The Organization argues that Claimant was taking medication on the day in question, and that Carrier was aware, prior to the accident, that Claimant was taking medication for pain in his hands. However, there is no indication that Claimant's faculties were impaired by his medication on the day of the accident. In addition, there is no evidence that Burke was aware, at the time he asked Claimant to drive, that Claimant was taking medication of any sort. Finally, if Claimant thought that the medication would affect his ability to drive safely, he had a duty to so inform Burke prior to taking the wheel. The fact that Claimant may have been taking medication therefore fails to absolve Claimant of any responsibility for the accident.

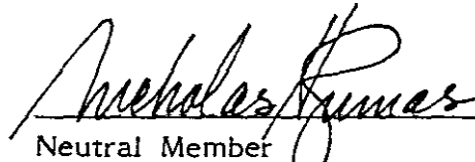
For the reasons stated above, it is the opinion of this Board that Claimant

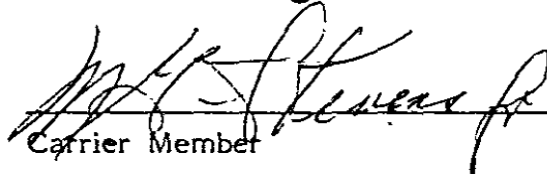
operated the Carrier vehicle in a negligent manner, and that his negligence was the proximate cause of the accident on October 26, 1982.

However, there is no evidence that Claimant, during his nearly 35 years of service with Carrier, ever received discipline prior to the incident under consideration here. After such a lengthy period of good service, dismissal is excessive, even for an offense as serious as failing to operate a Carrier vehicle in a safe manner. Under all the circumstances, the decision to dismiss Claimant was an abuse of Carrier's managerial discretion, and the discipline should be modified to reinstatement without lost pay.

AWARD:

Carrier shall reinstate Claimant to his former position immediately with seniority unimpaired, but with no pay for time lost.


Neutral Member


Carrier Member


Organization Member

DATE:

Nov. 13, 1984