

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 23

PARTIES TO DISPUTE

(Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM

Carrier's decision to dismiss Central Region Maintenance of Way employee J.M Albracht, effective November 16, 1995 was unjust

Accordingly, Carrier should now be required to reinstate the claimant to service with his seniority rights unimpaired and compensate him for all wages lost from November 16, 1995 (03-04-AA/130-13C2-953)

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

Claimant, on November 14, was the operator of a spike driving machine, hereinafter referred to as a spiker. While operating this machine, an accident occurred, injuring two employees, one fatally.

The Carrier, on November 22, charged that Claimant allegedly violated various rules, and set an investigation to determine the facts. As a result of its findings at the investigation, Carrier dismissed Claimant from its service.

Claimant, on the day of the incident, disconnected the quality control cart from his spiker and moved ahead about 150 feet. Both units, the quality control cart (which had propelling power of its

own) and the spiker, were being used as quality control for the main operation. They checked for bent or missing spikes, missed rail anchors, missing or crooked tie plates, etc.

Claimant went past a bent spike plus an area with no spikes. He stated he blew the horn that was on the spiker three times which is a signal indicating intent to reverse, saw one of the two employees on the quality cart move his hand, accepted that gesture as an OK to reverse, and did so, with tragic results. When the two machines hit, all three employees were looking down at the track bed, intent upon doing their work.

The surviving quality cart operator testified that he had worked well with Claimant in the past, and that when Claimant intended to reverse the spiker he would blow the horn and he would step outside the machine seeking assurance that the reverse movement was acknowledged. In this instance, however, if Claimant did blow the horn signaling intent to reverse, the quality control operator did not hear it, nor did a quality control operator signal Claimant, acknowledging Claimant's intent to reverse the spiker.

There has been a thorough discussion of the warning devices on the spiker machine, one concerning the horn, the other, the beeping signal automatically activated when the unit is placed in reverse. The horn, according to testimony adduced at the Investigation, is clearly audible to the quality control cart operators when the units are about 50 feet apart, even with the diesel engines on the units running, and even while the operators are wearing ear muffs or plugs to protect their ear drums. However, it was estimated the spiker was between 100 and 150 feet from the cart, and at that distance the horn blast is less audible.

Regarding the back-up alarm of a beeper, the testimony is that such devices are not that

audible when the diesel engines on the units are running and the operators are wearing plugs or ear muffs. It was also established that the quality control cart had no radio.

As sympathetic as this board is to the plight of the Claimant, the facts are undeniable. Claimant started the fatal reverse movement without following established procedures. If he blew the horn, as he alleged, no one on the quality cart acknowledged it. He just assumed the trailing unit heard the horn blasts. Claimant, after the horn blasts, again assumed the hand gesture he alleged to have seen coming from one of the quality control cart operators, was an acknowledgment of his intent to reverse. The surviving quality control cart operator said he gave no such acknowledgment and was not aware of the reverse movement. It is inconceivable to this Board that the deceased quality control cart operator would have signaled acknowledgment without communicating with his co-operator.

Although the speed of the spiker in the reverse movement was not an issue, it was developed that the quality control cart was shoved some 45 feet from point of impact.

The Organization challenges Carrier's finding of culpability in this case, arguing that the discipline was too harsh and an abuse of Carrier's authority. In the on-property handling, they had listed some 77 other incidents of collisions between machines, equipment and/or employees wherein the discipline process was instituted with findings from exoneration to dismissals, with reinstatements on a leniency basis to bolster their argument, but none involved consequences as tragic as found here.

The Organization also argues that this accident possibly would not have occurred had anyone in the supervisory ranks been working with the following unit in lieu of all working ahead with the majority of the gang; that had the quality cart operators a radio to contact the spiker; had the back-up

beeper been more audible, and/or had the revised version of Rule 62.1 been circulated among the employees at the time it was revised, not on the day after the incident.

The answers to these challenges can only be speculative. How having a supervisor present could have prevented the accident is an unknown. Radio contact would perhaps have been a more foolproof method of communicating, but then would the radios be effective. They had tried a pair of voice activated radios, one on the cart and one on the spiker, but they were ineffective. Perhaps an enhanced beeper signal when the spiker is in a reverse movement may have provided adequate warning, and perhaps not. The revised rule was made known to Claimant in a safety meeting held sometime prior to the accident, and each unit, also prior to the accident, had a label applied warning of the space requirements when moving or working the machines, so that of and by itself the rule revision is not a major factor in this dispute.

Claimant stated, and this has been affirmed by the quality control car operator, that they had been working together since March 6, when the gang started, without incident, and that adequate communications through job briefings, horn and hand signals had sufficed. When all parties are alert and in harmony, looking out for themselves and others, job briefings, horn and hand signals will suffice as is evident by the fact that they had worked together without incident for about eight months. But in one instance, in this situation, Claimant proceeded on assumptions rather than assurances with tragic consequences.

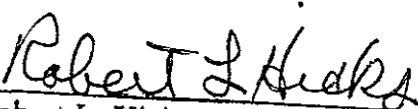
The Carrier has satisfied the substantial evidence required to find Claimant culpable of the charges. Under these circumstances, this Board finds there is no mitigating circumstance that calls for a lessening of the discipline.

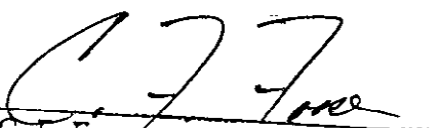
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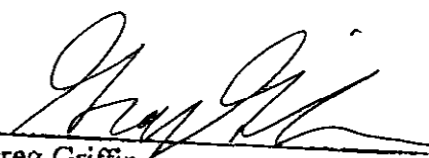
Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.


Robert L. Hicks
Chairman & Neutral Member


C. F. Foose
Labor Member


Greg Griffin
Carrier Member

Dated 3/11/97