

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute:

(Sheet Metal Workers International Association
(
(The Chesapeake and Ohio Railway Company
(

Dispute: Claim of Employees:

1. That under the Current Agreement, the Chesapeake and Ohio Railway Company, unjustly dismissed from service, Sheet Metal Worker Paul E. Boyles, from March 28, 1973.
2. That accordingly, the Chesapeake and Ohio Railway Company be ordered to re-instate Sheet Metal Worker Paul E. Boyles to his former position, compensate him for all time lost from March 28, 1973 until he is restored to service, with Seniority un-impaired, made whole for all vacation rights, and payment of Health and Welfare and death benefits under the Travelers Insurance Policy GA-23000.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

This is a discipline case arising out of an illegal work stoppage at Russell, Kentucky on March 1, 1973, which subsequently was halted by a federal court injunction. The record shows that the strike was precipitated by the claim of certain Sheet Metal Workers (pipefitters) to work being performed by the Carmen Craft. Claimant Paul E. Boyles was an officer in the Sheet Metal Workers International Association, holding both the General Chairmanship of District Council No. 41 and the Local Chairman office, representing the men at Russell Shops. On March 1, 1973 after apprising the Sheet Metal Workers at Russell that the jurisdictional claim had not been resolved to their satisfaction Claimant participated in a strike vote. At approximately noon Claimant informed Carrier officials that his people were "laying off" at 1:00 p.m. and at that time a picket line was established. Claimant served on the picket line. Carrier's operations were thus

interrupted and trains delayed at Russell for several hours when other employees refused to cross the picket lines. The picket line was dismantled and operations resumed upon service of restraining orders pursuant to the injunction.

On March 5, 1975 Claimant was sent a notice of investigation which read as follows:

"You are charged with leaving your assignment during the first shift on March 1, 1973, without permission, illegal picketing of The Chesapeake and Ohio Railway Company property, engaging in an illegal strike, disloyalty and conduct unbecoming an employe of this Company at Russell, Kentucky, on the same date, resulting in disruption of the Company's operation and hampering its ability to fulfill its duties to shippers and the public, as required by law."

Following an investigation Claimant was advised on March 28, 1973 that he was dismissed from all service of the Carrier for his responsibility in connection with the illegal strike.

Petitioner maintains that Claimant was not guilty of the charges in that he tried to stop the strike rather than encourage it. Close examination of the record evidence shows no support for this position. The transcript contains Claimant's admission that he participated in the illegal strike and performed picket duty. It is further asserted that this action is justified by Carrier's assignment of certain caboose work to carmen rather than pipefitters. Regardless of alleged provocation, adequate grievance machinery is available to resolve such disputes under orderly procedures in the Agreement. The alleged jurisdictional claim does not exonerate or mitigate Claimant's misconduct in the facts and circumstances herein.

There can be no doubt that the record evidence justifies the imposition of discipline by Carrier. Nor is there any serious contention of procedural irregularity herein. The only question remaining is whether the quantum of discipline imposed is in all of the circumstances arbitrary and unreasonably harsh.

We have reviewed carefully the record and the positions of the parties. Analysis shows that fourteen (14) employees including Claimant participated in the illegal strike on March 1, 1973. Of these 14, 1 received a 15-day suspension, 11 were suspended for 30 days, 1 employee who failed to attend the hearing and investigation was dismissed and Claimant was dismissed. The other dismissed employee has since been returned to service and Claimant alone of the fourteen

thus was dismissed from all service. Petitioner alleges that such imposition of discipline was discriminatory and a violation of Rule 39 of the Agreement, to wit:

"The company will in no way discriminate against employees who are, from time to time, selected to represent their respective crafts. Local and general committees will be granted leave of absence when selected to represent other employees'."

In our judgement Rule 39 is without relevance herein and comprises no basis for this claim. The record shows that Claimant, a local and general officer initiated and participated in a work stoppage which he knew to be illegal and without sanction from his international union. Moreover, the record shows that Claimant had been advised only three days earlier that the Organization was going to move the jurisdictional work claim through the appropriate contract grievance machinery. We can find on this record not one scintilla of evidence to support Claimant's assertion that he exercised the responsibility and influence of his office to advise and counsel the employees he represented to abide by the collective bargaining agreement. Rather, all available evidence leads to the opposite conclusion. In these circumstances, Claimant can find no comfort in Rule 39.

We follow the principles enunciated in Award 5614:

"Officers of a Union have responsibilities during a strike situation which are greater than those of ordinary union members. Participation in an unauthorized strike by a union officer is a more serious offense than in the case of an ordinary union member because of responsibilities of leadership and the influential effect of such conduct. Furthermore, proof of instigation of an unauthorized work stoppage may be by circumstantial evidence."

In the facts and circumstances herein we cannot conclude that the discipline imposed was so harsh and disproportionate to the offense as to be arbitrary and unreasonable. We must deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of September, 1975.