

The Second Division consisted of the regular members and in addition Referee James C. McBrearty when award was rendered.

Parties to Dispute: (System Federation No. 92, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Grand Trunk Western Railroad Company

Dispute: Claim of Employees:

1. That Carman M. L. Cooley, Jr., was improperly suspended November 10, 1975 and subsequently dismissed after investigation.
2. That accordingly, Carrier be ordered to restore Claimant to service with seniority rights, vacation rights and all other benefits that are a condition of employment unimpaired and compensated for all time lost from November 11, 1975, plus reimbursement for all losses sustained account loss of coverage under Health and Welfare and life insurance during time held out of service.

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 waived right of appearance at hearing thereon.

Claimant has a seniority date of April 15, 1964, and worked as a Car Inspector at Carrier's Battle Creek, Michigan yard from 3:00 P.M. to 11:00 P.M., with Thursday and Friday rest days.

On Tuesday, November 11, 1975, at approximately 12:20 A.M., Claimant was allegedly engaged in an illegal strike at Carrier's main entrance to its Battle Creek Yard and Freight Office facilities.

Claimant placed a large sign reading, "ON STRIKE" on his truck, which he parked on Carrier's property perpendicular to the roadway, partially blocking the entrance to the yard.

On four (4) different occasions, Claimant was ordered to leave the area by Carrier's Division Mechanical Officer, and on several more occasions by a Lieutenant in Carrier's Police Department.

When Claimant refused to leave on his own, and because his actions allegedly caused a work stoppage, delaying rail operations, he was arrested by Carrier's Police Lieutenant, and removed from the property by Pennfield Township police.

Claimant was advised on November 11, 1975, that he was suspended pending an investigation.

An investigation was held on November 18, 1975 to determine Claimant's responsibility in connection with the described incident. As a result of the investigation, Claimant was dismissed from service of Carrier by letter dated November 25, 1975.

A review of the record before us reveals that Claimant himself states: "I admit it (the strike) wasn't timely, and I acted on my own." Moreover, the testimony of three of Carrier's witnesses clearly proves that Claimant was guilty of the charges against him.

Claimant's illegal strike disrupted local operations, and delayed the departures of two (2) trains.

The discipline assessed in this case cannot be considered excessive under the circumstances involved. Discharge for engaging in an illegal strike has been consistently upheld by the Board. (See Second Division Awards 7171, 7153, 5614, 5183 and 4514; Third Division Awards 20143 and 20113; Public Law Board No. 18, Awards 4947 and 4946; and Public Law Board No. 1464, Award No. 1). Therefore the claim must be denied.

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 12th day of July, 1977.