

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

Parties to Dispute: (System Federation No. 6, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
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(Elgin, Joliet and Eastern Railway Company

Dispute: Claim of Employees:

1. That the Elgin, Joliet & Eastern Railway Company violated Agreement Rule 35 when they failed to provide a fair and impartial hearing and failed to give proper notice to the forty-four (44) employees dismissed on March 26, 1976, who are listed below:

J. Wilson	B. Robinson	R. Casillas
G. Gonzalez	A. Hamilton	M. Godina, Sr.
M. Kubinski	A. Hernandez	D. Henning
P. Paul	B. Watts	T. Donisch
G. Zabala	W. Hayes	R. Weston
M. Pearce	G. Raehsler	J. Maday
J. Paul	T. Jones	D. Smith
K. McDavid	J. Smith	R. Burson
J. McDavid	J. Hernandez	P. Toso
D. George	J. Earnest	F. Hendreson
J. Larson	J. Kozma	L. Zuelke
P. Stofko	J. Pershey	R. Bell
R. Fonseca	M. Stofan	W. West
R. Fonseca	J. Green	F. Jandura
C. Shaw	W. V. B. Moore	

2. That, accordingly, the Elgin, Joliet & Eastern Railway Company be ordered to reinstate the forty-four employees with all seniority, vacation and all other rights undisturbed and to compensate these forty-four employees for eight (8) hours at the pro rata rate for each day withheld from service until reinstated.

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.

On Monday, January 26, 1976, some 125 employees at Carrier's East Joliet Steel Car Shop engaged in a "sit down strike" by failing to perform any work after being instructed by supervisors. The local spokesmen for these employees stated that they would return to work only upon assurances from the Company that they would immediately be paid retroactive wage increase flowing from a National Agreement which had been ratified January 12, 1976. Whatever the merits of that complaint it was a grievable issue under Section 3 of the Railway Labor Act. There is, therefore, no doubt that this was an illegal work stoppage from the beginning and the employees were so informed both by Management and by responsible Union officials including the General Chairman of the Organization. The record indicates that the men ignored this advice and, in fact, turned on their General Chairman in open revolt.

On the afternoon of January 26, 1976 (Day 1 of the strike) Carrier obtained a TRO from Federal District Court. The TRO was posted on bulletin boards throughout the Shop and read aloud to the striking employees late in the afternoon of Day 1. On the morning of January 27, 1976 (Day 2) most of the striking employees returned to work, but some 60 employees stayed out and refused to work. The Local Chairman of the Union was served with a copy of the TRO by U. S. Marshalls. On the afternoon of Day 2 the District Court issued an Order to Show Cause why the employees who remained out should not be found in contempt of court. Some of the remaining strikers returned to work in the late afternoon of Day 2, but most of the Claimants herein did not. Finally, on January 28, 1976 the employees all came back to work.

By letter dated February 3, 1976, the 44 Claimants herein were notified to appear for a formal investigation to "develop all facts and determine your responsibility, if any, in connection with your instigation, encouragement, and/or participation in an unlawful, unauthorized work stoppage which occurred on Monday, January 26, 1976 and Tuesday, January 27, 1976, at the East Joliet Steel Car Shop." Following postponement, the investigation was held on March 15, 16 and 17, 1976. (Parenthetically it is noted that the retroactive wage increase payments over which the employees struck illegally were paid during the payroll period ending March 15, retroactive to January 15, 1976). Following the investigation each of the Claimants was found culpable and discharged effective March 26, 1976.

Several procedural grounds have been raised by the Organization as invalidating the discipline. Our review of the record persuades us that there was no prejudicial conduct of the hearing and that Claimants were afforded a full opportunity to develop the facts and tender a defense. Most of the Claimants chose to stand mute or to profess complete lack of recall regarding the events of January 26 and 27, 1976. The defense therefore consisted essentially of cross-examination of Carrier witnesses with little or no direct evidence offered by Claimants. Nor do we concur with the Organization's assertion that the notice of investigation was vague and

nonspecific. There is no basis for the procedural objections urged and we turn our attention to the merits.

On its face the Organization makes a reasonable argument that to dismiss only 44 of more than 100 employees engaging in an unauthorized work stoppage appears to be arbitrary and discriminatory. This is not to suggest that proven participation in a "wildcat" or unauthorized strike is not a dismissable offense. Rather the question presented in this case is whether Carrier had valid grounds for discharging some but not all of the strikers. In the particular facts of this case, Carrier has taken on the burden of proving that the 44 Claimants were more culpable and their misconduct more egregious than that of their fellow employees who also struck but were not terminated. A thorough review of the voluminous record (including more than 600 pages of transcribed testimony for the three-day investigation) persuades us that Carrier has met that burden of persuasion.

Three of the Claimants were local officers of the Organization. Messrs. Bell, Jandura and West comprised the Local Committee. Union officers are held to a higher standard of conduct than regular employees in such situations both because of their presumed greater knowledge of labor relations and because they are leaders and people of influence with the rest of the employees. The record establishes that these three local officers either personally participated in the stoppage and prolonged it or by example and advice encouraged others to do so. Typical of the actions and attitudes displayed was Mr. Jandura's testimony that employees who asked local officers whether they should go back to work were told in words or substance to do what they wanted to do.

Several others of the Claimants were not officials of the local organization, as such, but they acted as instigators or "enforcers" during the strike, actively encouraging and using cajolry and/or intimidation to spread the stoppage among the other employees and trying to prevent them from returning to work after the court orders were obtained. The transcript establishes that Claimants Fonseca, Hendreson, K. McDavid, Moore, Wilson and Zuelke all fall into the category of ringleaders of the strike.

Finally the remainder of the Claimants were men who stayed out all the way through Day 2 after most of their fellow employees had returned to work. Some of these were at the Shop in the cafeteria, but not going to work and some never reported to the Shop at all that day. Of those who appeared at the investigation, some of these men gave excuses of illness or personal business, some stated they had no work to do and others gave no reason for failing to go back to work on January 27, 1976. So far as the record shows all of these men were aware by Day 2 that their strike was illegal and that the Federal District Court had ordered them back to work. Most of their fellow employees were impressed sufficiently by that information to return to work, but these men did not. It is not unreasonable to conclude that they were either diehard zealots who would not give up their strike or

opportunists who had decided to continue on strike for one more day in order to have the time off. In either case their culpability is distinguishably more serious than that of the employees who returned to work once they were officially informed of the illegality and the possible consequences of their actions.

Based upon all of the foregoing we find no reason to overturn the discipline imposed by Carrier. The claims must be denied.

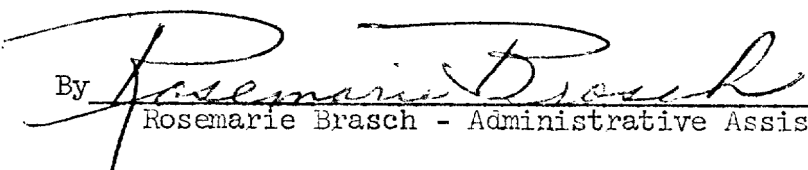
A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of May, 1978.