

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: { International Association of Machinists and
Aerospace Workers
Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation be ordered to restore Machinist Walter L. Johnson to service and compensate him for all pay lost up to time of restoration to service at the prevailing Machinists' rate of pay.
2. That Machinist Walter L. Johnson be compensated for all insurance benefits, vacation benefits, holiday benefits, and any other benefits that may have accrued and was lost during this period, in accordance with Rule J-1(e) of the prevailing Agreement which was effective April 1, 1976.

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 was charged with two offenses arising out of a series of events on August 1, 1978. After a hearing, claimant was dismissed for insubordination and for ordering an illegal work stoppage.

The claimant, a machinist at the carrier's Collinwood Diesel Shop, had only recently assumed the position of grievance chairman for machinists in the Backshop. Prior to August 1, 1978, tensions and antagonistic feelings developed between management and the employees in the Backshop regarding local management's alleged unilateral change in the method for processing grievances. While the above facts are basically undisputed, the carrier and organization disagree on how events unfolded on the afternoon of August 1, 1978. From the carrier's view,

the record fully justifies a finding that the claimant disobeyed a direct order to return to work and, concomitantly, that the claimant was a primary instigator of an impermissible work stoppage. The organization argues that the work stoppage was a spontaneous demonstration inevitable in light of the strained shop atmosphere as well as management's arbitrary modification of grievance practices. If the temporary work stoppage was spontaneous, neither the claimant nor any other employee could have issued a prior order to stop work. Therefore, the carrier is improperly singling out the claimant for discipline solely because he was the grievance chairman. The union defends the insubordination charge by contending that no carrier supervisor directly told the claimant to return to work. The issue is whether or not the carrier has presented substantial evidence showing the claimant committed the two offenses.

There is no doubt that a work stoppage (which lasted from fifty to sixty minutes) occurred in the Backshop on August 1, 1978. At least ninety employees discontinued work shortly after the lunch break. The work stoppage disrupted all shop operations. During the work stoppage, at approximately 12:30 p.m., the general superintendent, standing about one yard from the claimant, looked directly at the claimant and told him and others to return to work. The claimant continued to participate in the work stoppage. Even though the supervisor did not use the claimant's name in giving the order, other witnesses corroborated that the order was clearly directed at the claimant. Thus, the record presents substantial evidence that the claimant flagrantly disobeyed the general superintendent's order.

The only piece of evidence this Board can consider in determining if claimant ordered to the work stoppage is his voluntary statement given to the carrier, in the presence of union officers, on September 27, 1978. (Many carrier witnesses alluded to their knowledge, acquired from an independent source, which confirms that claimant ordered the employees to discontinue working. Since the carrier witnesses claimed the source was confidential and would not reveal the source, this Board is precluded from considering this testimony.) The claimant gave his statement voluntarily even after the organization properly advised the claimant to refrain from making any statement about the August 1, 1978 events. Looking only at this statement, we are convinced that the claimant both ordered the work stoppage and assumed full responsibility for the consequences of his order. In the September 27, 1978 statement, the claimant admits:

"I felt a general grievance was in order. I believe the time was 20 minutes or so after 11:00 A.M. ... (The claimant's fellow employees obeyed) a lawful union order and they did in fact obey a lawful union order... And based on that fact alone if you proceed against any of the charged individuals (the claimant's workmates), that would be a discredit to the imagination and under the circumstances that I gave the order." (Emphasis Added)

These excerpts demonstrate not only that the work stoppage was premeditated rather than spontaneous but also that claimant played a major role in precipitating the stoppage. Ironically, the claimant, in an attempt to solve shop grievance problems unlawfully resorted to the fomentation of more controversy. Third Division Award No. 14273 (Ives); Second Division Award No. 7545 (Eischen). Claimant admitted a serious offense which almost always mandates dismissal. The fact that he was a grievance chairman does not constitute a shield for his illegal

conduct. In Public Law Board No. 1128, Case No. 5, that Board said:

"The Committee has argued that Claimant may not be disciplined for acts done in the performance of his duty as Local Chairman. That principle may not defeat the Carrier's right to discipline him for acts which are not within the scope of his duties as Local Chairman. Participation in, or the conduct of, an unauthorized work stoppage is outside the responsibility of a Local Chairman. He was not insulated from the disciplinary action by his office."

Since we find substantial evidence in the record showing the claimant committed both offenses, we will not upset the carrier's assessment of discipline.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 3rd day of December, 1980.