

Award No. 5614

Docket No. 5425

2-IC-EW-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the current agreement at Paducah, Kentucky, when on April 11, 1966, the Carrier notified the Acting President and two Local Chairmen that they had been found guilty of the charges placed against them and they were dismissed from the service of the Illinois Central Railroad. On the same date the Carrier notified twenty-nine (29) Electrical Workers that they had been found guilty of participating in an unlawful strike on March 16, 1966, and they were suspended for five (5) working days. On the same date the Carrier notified eight (8) Electrical Workers that they had been found guilty of participating in an unlawful strike on March 16, 1966, and their records would be assessed a reprimand.

2. That the Carrier be ordered to reinstate Acting President E. M. Slaughter, Local Chairman T. V. Neihoff, and Local Chairman P. E. Moore, immediately without impairment to their seniority rights, vacation rights, and payment of their Health, Welfare, and Death premiums, and compensate them for all time lost due to their improper discharge from the service of the Carrier. That the Carrier be ordered to compensate the following employees for any time lost from April 18, 1966, through June 28, 1966, inclusive, due to the Carrier notifying these employees that they would be suspended for five working days:

B. J. Pease	J. D. Pullen
T. H. Walker	B. S. Simons
Wallace Blanchard	E. F. Grief
B. R. Burger	R. L. Patton
Mc. D. Simons	W. C. Taylor
H. T. Spees	A. T. McGregor

W. E. Dotson	E. L. Ayers
R. M. Clark	L. T. Lane
G. W. Smith	J. R. Harris
R. A. Lane	R. G. Shaw
C. T. Yopp	Meredith Henley
E. T. Houser	J. A. Rogers, Jr.
Harry Murphy	W. B. Hook
Earl Dotson, Jr.	C. F. Sigler
C. H. Lynn	

That the Carrier be ordered to remove the reprimands from the records of the following employees:

D. D. Wickert	B. G. Dunning
W. M. Jennings	O. L. Lockett
R. H. Barmore	W. L. Bouland
H. S. Hook	P. R. Earles

EMPLOYEES' STATEMENT OF FACTS: All employees named in part (2) of the Claim of the Employees, hereinafter referred to as the Claimants, were employed by the Illinois Central Railroad Company, hereinafter referred to as the Carrier.

That on March 25, 1966, the Carrier notified the Claimants by a formal notice to appear at an investigation to be held on Saturday, April 2, 1966, 8:00 A. M., in the Coach Room of the Irvin S. Cobb Hotel, Paducah, Kentucky. Employees' Exhibit I.

This formal notice states in part: "... for the purpose of determining your responsibility, if any, in connection with charges that you (1) participated in an unlawful strike on March 16, 1966, and (2) encouraged other employees to participate in this strike." See Employees' Exhibit I.

The investigation was held on April 2, 1966. H. A. Bennett, one of the employees notified to appear at this investigation was unable to appear due to illness in his family. W. L. McCallister, another employee notified to appear at the investigation, did appear but had a heart attack during the interrogation. Both of these employees were exonerated.

One Local Officer of the Carrier and two imported Officers of the Carrier referred to themselves as a Board of Inquiry. A stenographic report of the investigation was taken and as the transcript of this report is quite lengthy, Carrier has agreed to furnish copies to the Board and the Employees, in order not to burden the Members' files, will not submit another copy of the transcript. See Employees' Exhibit II.

Forty-eight (48) employees of the Carrier and Members of Local Union No. 475, signed a statement which reads as follows:

"We, the undersigned, want it to be known that the protest action taken by the Electrical Craft on March 16, 1966 was an action of the majority and was not an action of any one or any small group of the electrical craft.

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.

This is a discipline case arising out of an illegal work stoppage at Paducah, Kentucky on March 16, 1966, which was subsequently enjoined by court order. Grievants are three local union officials, who were dismissed by Carrier, as well as thirty seven (37) other electricians, who were either suspended or reprimanded by Carrier for their participation in the work stoppage. Petitioner contends that grievants were denied a fair and impartial hearing, and that the discipline imposed was discriminatory as all employes who engage in the same type of conduct must be treated essentially the same in the absence of a reasonable basis for variations in the assessment of punishment.

In the first instance, Petitioner contends that the notice received by the grievants failed to meet the requirements of Rule 39 of the applicable Agreement between the parties. Analysis of said notice discloses that the grievants were specifically advised with respect to the nature of the inquiry concerning their responsibility, if any, for the unlawful work stoppage. Furthermore, the record reveals that grievants were fully aware of the facts or events under investigation as evidenced by their testimony, and that they were neither deceived or misled as to the nature of the charges against them. Thus, we must conclude that the disputed notice was sufficiently precise to meet the requirements of Rule 39 of the controlling Agreement.

Examination of other procedural objections urged by Petitioner discloses that Carrier sought to rectify the basis of complaint during the investigation, and in no event would said objections constitute reversible error.

Petitioner does not deny that the work stoppage on March 16, 1966 was violative of the Agreement between the parties as well as the Railway Labor Act, as amended, but contends that Carrier's actions preceding the dispute provoked a spontaneous demonstration on the part of all participants in the illegal strike. Regardless of the alleged provocation, adequate relief was available through the grievance procedures set forth in the applicable Agreement and the imposition of discipline was justified.

The gravamen of Petitioner's case arises out of the different penalties imposed, and particularly the initial discharge of three union officials, two of whom were subsequently reinstated by Carrier on the basis of leniency. Petitioner avers that all employes who engaged in the work stoppage were equally responsible, and that Carrier's arbitrary and capricious differentiation between employes in meting out penalties was discriminatory.

Analysis of the record reveals that these three union officials were at union headquarters during the work stoppage; participated in discussions with

Carrier officials concerning conditions which might result in termination of the alleged work stoppage; were at least aware of a telegram from an International Vice President to the local chairman describing the withdrawal from service as "unauthorized and illegal"; and that none of them apparently sought to prevent or terminate the strike while in progress. The other claimants merely failed to report for work, and engaged in picketing or other related activity in support of the work stoppage.

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.

The material facts involved in this dispute raise a logical inference that the three local union officials at least aided and abetted the illegal work stoppage, which was neither authorized by the Union nor formally approved by the leadership. Hence, the disparity of treatment by Carrier was reasonable under the circumstances.

As to the reinstatement of only two of the local union officials on a leniency basis, prior Awards of this Board frequently have held that leniency is a matter solely with the discretion of management, unless a particular Carrier arbitrarily abuses such discretion. Here, we find no probative evidence of capricious or arbitrary action on the part of Carrier in the application of leniency.

Accordingly, the claim will be denied.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1968.