

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19601  
Docket Number CL-19413

Robert M. O'Brien, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-6959)  
that:

1. Carrier violated the provisions of the Clerks' Rules Agreement at Milwaukee, Wisconsin when it notified **employees** of the **Material** Department to report for an investigation on non-precise **matters** and subsequently assessed disciplinary measures against them.

2. Carrier's actions in holding investigations with the following **employees** shall be declared null and void and each **employee's** record shall be cleared of the disciplinary measures assessed against him or her:

H. Bahr	C. Royce	T. Taugher	M. Higgins
N. Bakken	S. Soulier, Jr.	J. Zingler	H. Janke
R. Banholzer	R. Spors		J. Kempinger
R. Beyer	J. Thckan	E. Augustin	P. Klisanic
F. Braun	A. E. Volke	W. Backes	R. P. Krol
F. Brieger	J. Weigert	A. Bagrowski	S. J. Laday
W. Deering	R. Winter	J. J. Crotty	J. Lipinski
W. Drobac		H. Ferken	K. Matous
W. Finney, Jr.	V. Amick	3. Grossman	K. Meister
G. Gunsolley	A. Babich	W. O. Kaebisch	F. Motola
J. Jenkins	R. Becker	R. Kraft	R. Peters
R. Kane	F. Blando	c. Kret	F. M. Reed
A. Kirchoff	P. Conklin	R. Lewis	L. Schmeling
T. Kitchkume	V. Fobes	J. F. Parks	H. Schulenberg
R. Knabel	S. Greenwood	R. Ramer	S. H. Sheff
F. Koch	H. Meyer	C. Ros	H. G. Tesch
G. Lang	E. J. Paik	A. Steinbrenner	K. Van Esa
R. Matuzak	s. Powalisz		A. Wenninger
E. McDonald	Wm. Scale	E. L. Bentley	J. R. Wolf
V. Riordan	V. Sliwinski	A. Cefalu	L. E. Kerlin

(3) Carrier's actions in holding investigations with the following **employees** shall be declared null and void, and each employe's record shall be cleared of the disciplinary measures assessed against him or her:

J. E. **Baum**  
D. L. **Grayson**  
G. C. Nelson  
M. **M. Heltsley**  
T. H. **Wagner**

OPINION OF BOARD: Although **there** was an order outstanding from the **U. S. District** Court, District of Columbia, restraining all shopcraft unions of the nation's railroads from striking until February 21, 1970, **a** strike occurred at Carrier's shops in Milwaukee on February 11, 1970. Claimants, **employees** of Carrier's Material Department at the Milwaukee shops, were not on strike. However, since the strikers had set up picket lines on this date, the **claimants** refused to cross the picket lines and **thus** did not report to their assignments on February 11, 1970. **Following** an investigation, claimants **were** found guilty failing **to** protect their assignments on February 11, 1970 and were each assessed either 10, 5, or 3 days deferred suspension. Appeal from the **assessment of discipline** was duly progressed with Carrier's final decision upholding the **discipline** coming on May 22, 1970. The within claim was filed on June **3**, 1970.

The Carrier contends that the claim **is barred** in that it was not filed within the 60 day period prescribed in Rule **36-1(a)**. That Rule is taken from the August 21, 1954 National Agreement. Following the investigation, March 23, 1970 was the last day on which any disciplinary assessment was made. And since the claim was not filed until June 3, 1970 Carrier contends Rule **36-1(a)was** violated. **However**, claimants appealed the assessment of discipline in **accordance with Rule 22** and on May 22, 1970 Carrier rendered a final decision upholding the assessment of discipline. Since the claim was filed within 60 days of Carrier's final decision the Organization contends Rule **36-1(a)was** complied with.

The procedural issue raised herein is not novel, Award 17595 of this Division, involving the same parties herein, upheld the Organization's position and concluded: "We do not believe **it** a proper construction of the two **rules** to require Claimant to abandon his remedy **under** Rule 22 and require him to initiate a new claim under Rule 36 when he has not obtained a final decision from the **carrier** within 60 days of the initial action taken by the Carrier under Rule 22. Nor do we believe it is the intent of the parties that an **employee** maintain concurrent claims or grievances under Rules 22 and 36 arising **from the same** act of Carrier, seeking the same relief and from the same officer of the Carrier." We subscribe to the reasoning therein and find that the "occurrence" referred to in Rule **36-1(a)was** the final decision made May 22, 1970 upholding the **assessment of discipline** and the claim was filed within 60 days of that date and thus not **barr...** We will proceed to the merits of the claim.

At the investigation most of the claimants testified that the **reason** they would not cross the picket lines was their fear of safety for themselves, their families and their property had they crossed to protect their assignments. They did not know it was an illegal strike. Some testified that upon arriving **at** the scene police told them to turn back and go home. **Many** did not even know who was on strike. Many of the **claimants are elderly**. Most feared either immediate physical harm **or** subsequent reprisals to their person **or property** if they attempted to protect their assignment.

Carrier believes that since the strike was illegal, there was no violence at the scene, the strikers were peaceful and there was adequate police **protection**, there was no **reason** for claimants' refusal to cross the picket lines.

We cannot agree with Carrier's actions. It is undisputed that the claimants did not take part in the picket line. Nor did they know whether the strike was legal **or** illegal. And even if they did know, it is highly unlikely that they could distinguish the two adequately so **that they** could guide their actions accordingly. It is **immaterial** that in **retrospect** it developed that the strike was illegal and there was no violence at the picket line. Hindsight is not **enough**. It is the subjective **belief** of claimants on the morning of February 11, 1970 that is the determining factor **as to whether or** not they were justified in refusing to cross the picket lines.

From the **investigations** it was shown that on the **morning** of February 11, 1970, **claimants' fear** was **well** founded. From all the circumstances surrounding the picket lines, we **feel** that claimants were **justified** in not crossing them and when Carrier subsequently **disciplined claimants** for this action it acted arbitrarily and unreasonably. The discipline imposed **cannot** be allowed to stand.

**FINDINGS:** The Third Division of the **Adjustment** Board, upon the whole record and all the **evidence**, finds and holds:

That the parties **waived** oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division **of** the Adjustment Board has jurisdiction **over** the dispute involved herein; and

Award ~~Number~~ 19601  
Docket Number CL-19413

Page 4

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL ~~RAILROAD ADJUSTMENT~~ BOARD  
By Order of Third Division

ATTEST: *E. A. Killian*  
Executive Secretary

Dated at Chicago, Illinois, this 14th ~~day~~ "f February 1973.

*[Handwritten mark]*