

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19876
Docket Number CL-19970

C. Robert Roadley, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station Employer
PARTIES TO DISPUTE: {
(George P. Baker, Richard C. Bond, **Jervis Langdon, Jr.**,
{ and Willard **Wirtz**, Trustees of the Property of
{ Pen" Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (**GL-7233**)
that:

(a) The Carrier violated the Rules Agreement,, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of **dismissal on D. H. Bowen**, Clerk in the yards at Detroit, Michigan, Northern Region, Detroit **Division**.

(b) Claimant D. H. **Bowen's** record be cleared of the **charges** brought against him on January 7, 1972.

(c) Claimant D. H. **Bowen** be restored to service with seniority and all other **rights** unimpaired, and be compensated for wage loss sustained during the period out of service, plus interest at 6% per annum compounded daily.

OPINION OF BOARD: This is a discipline case wherein claimant was dismissed from service on the grounds that he had promoted a" illegal strike when he picketed and **carried** a picket sign at the Carrier's **Livernois** Yard, passed **out** strike literature to the Carrier's employeea, and improperly used Carrier equipment (teletype) to advise the **employees** that a strike **was** to be conducted at 0600 on **January** 3, 1972. The purpose **of the** alleged **strike** was **to** force **the Car-**
rier to discuss grievance **matters** which were Listed **on** Literature that **was** being distributed by claimant **at** the time of the incident in question.

An investigation was **held and** claimant **was** afforded full opportunity **to** present **his** position. A careful review of the transcript of the investigation reveals the following pertinent **facts**:

1. Claimant did, in fact, picket the Carrier property carrying a picket sign and passing **out** literature designed to foment a work stoppage;
2. Such activity was not authorized by the **claimant's** International Union;
3. Several of the Carrier's employees did absent themselves **from** duty because of the picketing activity;

4. Claimant's motivation for this entire activity was to circumvent the orderly process established by statute and by agreement for the handling of grievance matters.

It is **common** knowledge to those familiar with the provision of the Railway Labor Act that it is a violation of the Act for employees to engage in strikes or **work** stoppages over grievance matters. Section 3, First (1) of the Act establishes **the procedure** to be followed in the handling of disputes growing **out** of grievances up to, and including, final and binding determination. **Additionally**, the Agreement between **the parties** has, by mutual **agreement**, set forth the Rules to be followed as a **prerequisite** to resorting to the Section 3 procedures. It is clear **from the record** that neither the provisions **of** the Act, referred to above, or the Rules in the Agreement were adhered to in this **instance**. This observation is compounded by the **fact that the** claimant was functioning **as** Vice General Chairman of the Organization and should have been **thoroughly** familiar with the required procedures **referred to above**.

Numerous Awards of this Board have **recognized** the principle that one who **instigates** a work stoppage is guilty of a serious offense.

Award 16287 stated, in part:

"The weight of **the** evidence **clearly** shows that the Claimant was one of the primary instigators of the work stoppage in **violation** of Rule 67 of the **General Rules** and Instructions. The **punishment** (dismissal) cannot be **said** to be arbitrary, capricious, discriminatory or unsupported by the **record** and in accordance with the broad latitude given **Carriers** by this Board, in the matter of assessing discipline, we will not upset **the** punishment decided upon by the Carrier. (See Award 2531, 8711, 14273, 19881)."

We concur in **the reasoning** set forth in the foregoing Award and find that it has equal application to **the instant** case. WC will therefore deny the claim.

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

That the discipline assessed was not arbitrary, capricious or unreasonable.

A W A R D

Claim denied in its entirety.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 27th day of July 1973.