

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19986  
Docket Number W-20287

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
( REA Express, Inc.

STATEMENT OF CLAIM: Claim of the District Committee of the Brotherhood (Case No. 119) that:

(1) The Agreement governing hours of service and working conditions between the parties, effective January 1, 1967 was violated by The R.E.A. at Philadelphia, Penna. when on April 26, 1971 Employee Robert J. Hughes was suspended from service and was further violated when on May 11, 1971 he was notified by Area Manager Hugh Graef that he was dismissed from service as a result of the investigation held May 7, 1971, being allegedly charged with violation of Rule 67 of the General Rules and Instructions of the R.E.A., and being specifically charged with aiding and abetting and actively participating in an unauthorized work stoppage on Monday, April 26, 1971, and

(2) That Mr. Robert J. Hughes shall be restored to service with seniority unimpaired and compensated a full day's pay at the rate of the driver's position formerly held by him, plus any subsequent increase of a general character effective April 26, 1971, and continuing thereafter until such time as he is restored to service, with seniority rights unimpaired: and

(3) That Robert J. Hughes shall be compensated additionally for any overtime which he would have received, and all expense incurred by him due to the R.E.A. canceling his Health and Welfare Policy with Blue Cross and/or Blue Shield and he having to assume premium payment thereof and to continue until such time as the R.E.A. again assumes his premium payments: and

(4) That Robert J. Hughes shall have his record cleared of all charges which relate thereto.

OPINION OF BOARD: This is a disciplinary case involving permanent dismissal. At the time of the incident leading to the discipline the claimant was a regularly assigned driver at Carrier's Philadelphia Express Office. He was also Recording Secretary of the BRAC local, and a member of the Grievance Committee. He was dismissed from Carrier's service, effective May 11, 1971, following hearing and findings of guilt on the following charge:

"You are hereby charged with violation of Rule 67 of the General Rules and Instructions, reading in part, as follows: 'The personal conduct and deportment of employees must be such as to reflect credit upon themselves and on the company, \*\*\*'

Specifically, you are charged with aiding, abetting and actively participating in an unauthorized work stoppage on Monday, April 26, 1971 prejudicially affecting the operations of REA Express at Philadelphia, Pennsylvania, which also constitutes a violation of the Agreement signed at Washington, D. C. on December 13, 1968 wherein it is stated:

"\*\*\* The parties acknowledge \*\*\* the right of management to discipline for just cause which includes discipline \*\*\* for participation in illegal work stoppages during the term of this Agreement\*\*\*\*"

The Employees seek to overturn or modify the discipline principally on the grounds that: 1) Carrier's right to impose discipline was inapplicable to the incident because claimant was off duty when it occurred; 2) the evidence was insufficient to support the charge because Carrier did not produce any employee who had refused to work due to claimant's influence; 3) the discipline was unjustified because claimant was not aiding the work stoppage, but instead was attempting to restore order in a confused situation; 4) the Carrier's consideration of a prior discipline, in fixing the herein discipline was improper, because such prior discipline was still under appeal and subject to reversal or modification; and 5) the discipline was discriminatory in that, while some two hundred employees participated in the work stoppage, the Carrier preferred charges against claimant only.

The Carrier says none of these contentions are valid and that the discipline is amply supported by the evidence adduced at the hearing.

The claimant's being on duty was not an essential element in the offense for which he was charged and, consequently, the Employees first contention is without basis. The remaining contentions warrant a review of the events which led to the charges and whether Carrier's action thereon was justified.

A national strike was enjoined by a court order which required the employees to return to work over a three-day period, Monday, Tuesday, and Wednesday, April 26, 27, and 28, 1971. There is no dispute that the order required the employees to return to work; however, at Philadelphia, a dispute arose concerning the interpretation of the provisions of the order in respect to the manner in which the men should return to work. As a result none of the 153 employees assigned to work on Monday, April 26, 1971, reported for duty which, in the circumstances,

constituted an illegal work stoppage. From the fact that no employees reported for work on April 26, considered in conjunction with evidence that claimant had said he was going to tell employees not to report, the Carrier concluded that claimant did in fact issue instructions against reporting and thereby aided, abetted, and actively participated in the illegal work stoppage.

The critical evidence against claimant was the testimony of Messrs. Robert Marciniowski, Assistant Service Center Manager, Paul J. Roche, Service Center Manager, and Vincent Abruzzese, Line Haul Supervisor. Mr. Marciniowski testified as follows:

"Q. When was the first indication to you that the employees were not going to report for work on Monday?

A. Approximately 6:20 p.m. at my home on Sunday evening, I received a phone call from Protective Committee Member Sob Hughes.

Q. What did Mr. Hughes tell you?

A. He told me the people we were calling were in turn calling him and he was instructing them not to report to work on Monday unless regular positions were restored.

Q. When so informed what did you tell Mr. Hughes?

A. I told him this was our procedure, we were calling the people as needed in seniority order for Monday and Tuesday, and all regular positions would be restored on Wednesday, April 28.

Q. Did he accept your explanation?

A. No, he did not."

Later Sunday evening at the Union Hall, with Messrs. Roche and Abruzzese and several union representatives in attendance, the disagreement about the manner of return to work was discussed. Mr. Roche testified.

Q. "...Were any comments made to you relative to starting time of jockeys?

A. Yes. Bob Hughes stated he was going to instruct jockeys to report at their regular starting time, and not the times we called the people in. And, also that I took him out of service once before and could probably do it again."

Mr. Abruzzese corroborated the Roche testimony.

"Q. Did you hear any comments between Mr. Hughes and Mr. Roche relative to jockey jobs?

A. Yes. Mr. Hughes said Mr. Roche took him out of service before and he would take him out again, he was going to call the people to come in on their regular jobs."

The claimant flatly contradicted the foregoing testimony by stating that:

"\*\*\*\*I went to PXT at approximately 3:15 A.M. When I arrived a few men were milling around. I told them the strike was over and they were to go to work if they were due in. If they were not due in I told them to go home and clear the area, so that they would not interfere with anyone coming or going. I made sure that all picket signs were removed. I went to my car and remained in the car until approximately 8:30 A.M. when the Local Chairman arrived. At this time I went home. During the time I was at the PXT two runs returned (Katheder and Hammer) and they were not interfered with in any way."

Claimant's testimony was corroborated by other employees who were at the Union Hall on Sunday evening, April 25, 1971. Roth Mr. James W. Hamilton and Mr. Joseph B. Daley testified that they did not hear the claimant make any statement against returning to work, either to Mr. Roche at the Union Hall or in the phone conversation with Mr. Abruzzese.

In addition to the foregoing testimony on the main charge, the Local Chairman, Mr. George A. Smith, questioned Mr. Roche with regard to the motive for singling out claimant for disciplinary action.

Q. The conversation in the office on Tuesday morning, when you called me into the office Tuesday, the 27th, I believe there was John Larson, Rob Marcinowski, Mr. Bulman and Mike Rizzo. I was being interrogated with regard to what took place on Monday. Do you recall what your answer was repeatedly to questions by me as to why you were singling Mr. Hughes for disciplinary action?

A. I stated that certain elements that will come out in the testimony will prove the reason for Bob Hughes to be cited for investigation.

Q. Did you say, I quote "We have the goods on Hughes this time."

A. I don't believe I said that.

Q. Would you care to tell us why Mr. Hughes is always singled out and held personally responsible whenever any adverse action takes place?

A. I do not understand time question.

6. Whenever there is any kind of problem, any disagreement whatever Mr. Hughes is held **personally** responsible?

A. I would answer that by stating it was entirely by his own action, that I have no personal vendetta against Mr. Hughes or **any employees**.

Q. However, as you stated not one **employee** worked that day.. There were upwards 200 employees on the street, no one **was cited for disciplinary** action except Mr. Hughes. Will you elaborate on **that**?

A. I would say the reason he **is** being cited is because of **the circumstances surrounding** his participation.

**Mr. Graef:** Mr. Roche, did you at any **time** state this **time** we have the goods on **Mr. Hughes**?

A. No, I did not.

Of the four persons said by the Local **Chairman** to be **present** when **Mr. Roche** made the alleged "We've got the goods" **statement**, only **one** testified on the **statement**. **Messrs. Rizzo** and **Bulman** were not available to testify; **Mr. Marcinowski** was present but **was** not questioned on the point. **Mr. John Larson, Area Manager**, gave **testimony** which **tended** to corroborate the **Roche testimony**.

**Mr. Graef:** **Mr. Smith** has called you **as a witness** in this **investigation** and **will** proceed **with** the questions.

**Mr. Smith:** **Mr. Larson** did you at any time see **Mr. Hughes** at **FXT** on **Monday, April 26**.

A. No, I did not.

Q. Were you present in the office on Tuesday, **April 27** when **Mr. Roche** was questioning **me** regarding the stoppage, **Monday, April 26**?

A. Yes.

Q. Do you recall **Mr. Roche's** answer to a question put by **me** as to why **Mr. Hughes** **was** being **singled out** for disciplinary action, when in fact **all** employees participated?

A. I **remember** the question, not the answer. I could not quote the answer.

Q. Do you recall in answer to my question Mr. Roche saying, "We have the goods on Hughes this time?"

A. No I cannot remember his answer at all, it does not strike me as being the gist of the answer. I cannot recall the answer verbatim.

From our review of the foregoing testimony, and the whole record, we are satisfied that the record evidence adequately supports the Carrier's discipline. There was a sharp conflict in the testimony on the main charge of whether claimant had said he was going to tell the employees not to return to work in the manner prescribed by Carrier's procedure. This created a credibility issue which has been resolved by Carrier against claimant and the record provides no basis for disturbing that determination. Also, we find no substance in the Employee's contention that Carrier's evidence was insufficient because Carrier did not produce any employee to testify that claimant had told him not to report to work on April 26, 1971. The employees were united to the last man in the work stoppage and it would have been surprising indeed if an employee had appeared to testify against claimant. In any event, whatever persuasive quality this argument might have is neutralized by the fact that claimant failed to produce any co-workers to testify that he had instructed them to go to work or to go home. In like vein we reject the Employee's objection to Carrier's consideration of a prior discipline, in fixing the herein discipline, because the prior discipline was still under appeal and subject to reversal or modification. Such prior discipline has not been reversed or modified, so far as the instant record shows, and, consequently, the contention is too speculative to be given any weight in these considerations. And finally, we do not find any basis for the contention that the discipline was discriminatory because, while all employees participated in the work stoppage, only the claimant was singled out for discipline. The identical charge preferred against claimant was also preferred against the Local Chairman; after hearing on June 16, 1971, the Local Chairman was also disciplined by permanent dismissal, effective January 18, 1971. See Docket #20291.

In view of the foregoing we shall 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 Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A.W. Paulson  
Executive Secretary

Dated at Chicago, Illinois, this 12th day of October 1973.