

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20141
Docket Number CL-20152

Irving T. Bergman, Referee

(Brotherhood of Railway, Airline and Steam-
(ship Clerks, Freight ~~Handlers~~, Express
(and Station **Employees**
PARTIES TO DISPUTE: (
(George P. Baker, Richard C. Bond, and **Jervis**
(**Langdon, Jr.**, **Trustees** of the **Property** of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-7270) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of 15 days record suspension on S. P. **Gregley**, Car Control Clerk, River Rouge **Yard**, Detroit, Michigan, Detroit Division, Northern Region.

(b) Claimant S. P. **Gregley's** record be cleared of the charges brought against him on January 11, 1972.

OPINION OF BOARD: The Carrier assessed a 15 day record suspension for participation in an illegal strike. This was based upon the testimony of **two** Carrier supervisory **employees**. One testified that he did not see the claimant when he passed the picket line at **6:50** A.M., the second testified that he "believed" he saw the claimant at that time. Both testified that they saw claimant at **7:50** A.M. when they returned to the picket area. Both witnesses testified that they did not see the claimant carry a picket sign or hand out literature although others carried picket signs. One of the witnesses testified that he spoke to claimant but only passed the **time** of day.

The Organization has objected **to** the notice of hearing given to claimant in that it did not specifically state the purpose of the hearing. Objection has also been made to the determination after hearing being made by an officer **who** was not present at the hearing and thereby could not pass judgment on the conflicting testimony.

The claimant testified that he **arrived** at **7:25** A.M. for his **7:30 A.M.** assignment; he saw the pickets, was informed that it was a legal strike and remained in the **area** of the picketing drinking coffee until the pickets were removed less than one hour later. He testified that he did not see the Carrier witness who believed that he was there at **6:50** A.M., until **7:50** A.M.

The notice of hearing included as its purpose: "-- in connection with your alleged participation in an unauthorized work stoppage from approximately 6:00 A.M. to approximately **8:20** A.M. at which time you were observed walking a picket line--at approximately **7:55** A.M. --." At the hearing, the claimant stated that he **was**, "properly notified as to the purpose of this investigation." and that, "he was ready to proceed with this investigation." We find that this was adequate notice and that the claimant was prepared to proceed with his representative present; see Third Division Award 19636.

The Carrier has argued that the Organization did not raise on the property the objection that the determination **was made** by an officer who was not present at the hearing. This was not denied by the Organization. We shall not give consideration to this objection; see Third Division Award 16348.

The charge against the **claimant** is that he allegedly participated in a strike because he was observed walking a picket line at approximately **7:55** A.M. This **would** require proof that he took an active part in the picketing. There is no testimony as to the claimant's actions between 6:00 A.M., when the strike started, and **7:55** A.M. nor is there testimony as to his actions from **7:55** A.M. to **8:20** A.M. when the strike ended. Apparently the only reason the claimant **was at** the scene of the picketing **was** because he was required to **be there** for his assignment scheduled to start at **7:30** A.M. There is no evidence that when the Carrier's **supervisor "passed** the time of **day"** with him, he was informed that the strike was illegal or that he was instructed or directed to leave the picket area. The inference, asserted by the Carrier that claimant was picketing because **he believed** the strike to be a legal one is neither conclusive nor is it evidence of picketing supported by the testimony of witnesses.

In second Division Award 4494 on page 13, a lengthy discussion and citation of authorities supports the proposition that when claimant reported for work and saw a picket line he would not be expected, as a union member, to **cross** the line. In this case, claimant's alternative was to remain at the picketing site or to leave. The fact that he chose to remain and be available to work if the picket line was removed, is not evidence of participation.

A series of Awards submitted for our consideration include facts which demonstrated that the claimants in those cases incited the work stoppage or actively picketed. They are not applicable to this case.

The Carrier has failed to meet the required burden of proof.

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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

The Agreement was violated.

A W A R D

Claim **sustained**.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1974.