

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20151

Docket Number CL-20160

Frederick R. **Blackwell**, 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-7282) 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 D. A. Chmielewski, Car Control Clerk, Livernois Yard, Detroit, Michigan, Detroit Division, Northern Region, and caused him to serve a ten day actual suspension on a prior record suspension.

(b) Claimant D. A. **Chmielewski's** record be cleared of the **charges** brought against him on January 11, 1972.

(c) Claimant D. A. Chmielewski be compensated for wage loss sustained during the period out of service, **plus** interest at the rate of 6% per annum compounded daily.

OPINION OF BOARD: This is a discipline case arising from the same unauthorized work stoppage **that** was involved in Award 20143. As in the other award, the Claimant here was charged with participating in an unauthorized work stoppage and being observed walking a picket line. Following a hearing and findings of guilt, the Carrier assessed this Claimant a 15 day record suspension which resulted in a 10 day actual suspension on a prior record suspension.

As in Award 20143, and for the same reasons, we find no procedural due process deficiencies herein, and, accordingly we shall proceed to the merits of the discipline.

The hearing testimony showed that, between **6:10 a.m.** and **8:00 a.m.**, on January 3, 1972, an unauthorized work stoppage occurred at Carrier's River Rouge Yard office, Detroit, Michigan. (Award 20143 shows the work stoppage as occurring between **6:30 a.m. - 8:20 a.m.**, but this discrepancy concerning time is of no consequence.) Claimant drove his car to work on January 3, 1972, arriving at the north **gate** of Livernois Avenue at about **7:30 a.m.** to protect his regular position of **car** control clerk which began at **7:30 a.m.** in Building Number 4. **His** testimony on his whereabouts and activities is as follows:

"MR. MILLER (HEARING OFFICER) TO MR. CHMIELEWSKI

Q. Mr. Chmielewski, at approximately **7:47** a.m. January 3, 1972, were you at the north gate of Livernois Avenue?

A. I was at the north gate of Livernois Avenue.

Q. And what were your activities at this time?

A. Approximately **7:47** I was sitting in my car inside the north gate at Livernois Avenue.

Q. Mr. Chmielewski, what time did you report for work that morning?

A. I reported for **work** at **7:30**, but there were picket signs and I didn't get into Building 4 until approximately between **7:50** and **7:55**.

Q. **Mr.** Chmielewski, did you at any **time** participate in a work stoppage?

A. I didn't cross a picket line.

Q. Did you join the picket line?

A. No.

Q. Did you carry a sign?

A. No, I didn't.

* * * * *

Q. Mr. Chmielewski, did you get out of the car?

A. At approximately what time? Eventually, I did get out of my car.

Q. When's the first you got out of your car? **What** time?

A. When the picket signs came down.

Q. At what time was this? Approximately.

A. Approximately **7:50**.

"Q. Mr. Chmielewski, you stated earlier that you had reported for work at 7:30. Does this mean that you arrived at the north gate at 7:30?

A. Yes.

Q. Did you get out of your car then?

A. No."

The Carrier's evidence as to Claimant's whereabouts came from Mr. James Lauzon, Supervisor Yard Procedures, and Mr. George Packer, Detroit Division Supervisor of Crew Assignments. Mr. Lauzon's testimony showed that Claimant was not at his duty station at 7:30 a.m., but he had no knowledge of Claimant's activities during the work stoppage. Mr. Packer's testimony, in pertinent part, is as follows:

"MR. MILLER TO MR. PACKER

* * * *

A. * * * * * At 7:47 A.M. I walked out to the main entrance to Building 4 which would be the north gate and observed approximately 30-40 clerks participating in a strike and blockading the drive entrances by walking back and forth preventing traffic from entering the property. I noted several individuals, one of which was Mr. Dave Chmielewski, who was participating in this strike and then I returned to my office and proceeded to find the solutions as to how to get the crews into work as they were beginning to call from other locations with the same problem of picket lines.

Q. Mr. Packer, do you know Mr. Chmielewski personally?

A. Yes, sir. I've known Mr. Chmielewski oh, I imagine, 3 maybe even 4 years.

Q. And you've had occasion to work with Mr. Chmielewski?

A. During close to all of those 3 or 4 years.

Q. Mr. Packer, was Mr. Chmielewski carrying a sign?

A. No, sir. I did not see Mr. Chmielewski carrying a sign.

"Q. Did you see him in a line?

A. Yes, sir. He was with the 30 or 40 people outside the main gate. ~~it~~ was right at the entrance, and they **were** congregating blocking the drive entrances.

* * * * *

Q. Mr. Packer, would you describe what activities you say you saw Mr. Chmielewski doing?

A. Yes. Mr. Chmielewski was standing at the drive area with three, possibly four, other individuals close to him, and during the two or three minutes he was standing there they wandered around and in front back and forth of the drive area to **Livernois** Avenue.

Q. Did you at any time see Mr. Chmielewski in his car?

A. No, sir. Not at all.

Q. And from what period of time were you at this location?

A. Roughly, it was between **7:45** and **7:50**.

Q. Was Mr. **Chmielewski** there when you arrived?

A. Yes, he was and he was also there when I left."

It is clear from the foregoing that, while Claimant admitted not crossing a picket line, he made a strong denial of the charge **made** against him. It is also clear that Mr. **Lauzon's** testimony failed to link Claimant to the charged offense and, thus, Carrier's case depends solely upon Mr. Packer's testimony. He, Mr. Packer, stated the general conclusion that Claimant was "participating" with thirty to forty clerks in the unauthorized work stoppage; however, the specifics he gave simply do not support his conclusion. His testimony on specifics placed the Claimant among a group of five persons who, for about three minutes, were standing at and wandering around the drive area **to Livernois** Avenue. **This** testimony does not even describe a picket line, much less place Claimant in one. Consequently, even when viewed in its most favorable light and taken as completely true, the Carrier's evidence is too generalized, vague, and uncertain to be called substantial. Carrier's determination of guilt was therefore arbitrary and we shall sustain the claim in its entirety, except that interest is not allowed.

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 V A R :)

Claim sustained, except that interest is not allowed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1974.