

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

**Award Number 22560
Docket Number MW-22697**

Paul c. carter, Referee

PARTIES TO DISPUTE: { **Brotherhood of Maintenance of Way Employes**
{ **Chicago, Rock Island and Pacific Railroad Company**
{ **(William M. Gibbons, Trustee)**

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Machine Operator C.G. Goodnight was without just and sufficient cause and exceedingly disproportionate to the offense with which charged (System File 11-D-742/L-126-1647).

(2) The Carrier shall reinstate Claimant Goodnight to his former position and accord him all the other benefits and privileges of Rule 19."

OPINION OF BOARD: Claimant was employed by the Carrier as a machine operator, with service from 1957, except for a two-year period when he was self-employed. The Carrier states that he had a continuous service dating from November 15, 1975.

On June 16, 1977, claimant was notified:

"You are hereby notified that a hearing will be held in the office of the Asst. Superintendent at De6 Moines, Iowa on Thursday, July 7, 1977, at 10:00 A.U., to develop the facts, discover the cause and determine your responsibility, if any, in connection with your calling a work stoppage for yourself and other employee6 and refusing to return to work upon request at approximately 6:55 AM, Wednesday, June 15, 1977, at Atlantic, Iowa in violation of Rule6 B-D-Q and N of the Rule6 and Regulations for Maintenance of Way and Structures.

"Please **arrange** to be present with **your** representative, if representative **is desired**, and such witnesses as provided for **in the Maintenance of Way Agreement.**"

The investigation was **postponed** and was held on **July 21, 1977**. Claimant **was** present throughout the investigation **and** was represented by the General Chairman of the **Organization**.

Assistant Roadmaster D. **Newton** testified at the **investigation** to the effect that he arrived at the Atlantic depot at **about 6:45 a.m.**, on **June 15, 1977**, to report for work. The **claimant and several other machine** operators and laborers were assembled at the depot to **present** their expense forms. The **Assistant Roadmaster** testified that after receiving the expense **forms** he proceeded to go into the depot to get **things** arranged for the day. At about **6:55 A.M.**, **claimant**, acting as **a spokesman** for the group, approached Mr. **Newton** with a list of grievance⁶ **in his own handwriting**. Mr. **Newton** informed **claimant** that he should handle such matters through **his** union representative, and instructed **claimant** and the remainder of the men to go to work. **All** refused to return to work. The Assistant Roadmaster then contacted Mr. **L. Harper**, Supervisor of Work **Equipment**. Mr. Harper arrived at about **7:05 A.M.** He was met by the claimant **and** instructed claimant to go to work. Again claimant refused to do so. Mr. **W. Cogdill**, Manager, Maintenance of **Way Equipment**, was then **contacted** and apprised of the **men's** refusal to work.

Mr. **Cogdill** testified **in** the investigation that he talked to claimant on the telephone at Atlantic, and that claimant informed him that he could get nothing out of the organization **and** this was the way he was handling it (the **grievances**); that claimant informed him that he was the instigator of the work stoppage and the ringleader; that he **informed** claimant to go to work **under** the **same** condition⁶ that he had previously worked under. **Claimant** finally went to work about **7:45 A.M.**

A thorough review of the **investigation** reveals substantial evidence that **claimant was** the instigator, ringleader, and acted as **a spokesman** for the group, which actually resulted **in** a work stoppage, **even** though not of long duration. **It also** establishes that the work **stoppage** was unauthorized.

Rule Q of **the** Rules and Regulation⁶ for Maintenance of **Way** and Structures reads:

"Q. Employees must report at the appointed time, devote themselves exclusively to their duties, must not absent themselves, zwr exchange duties with, or substitute other6 in their place, without proper authority."

Rule 20 of the applicable working Agreement reads:

"RULE 20. PENDING DECISION. Prior to the assertion of grievances or during the appeal a6 herein provided, there will neither be a shut-down by the railway nor a suspension of work by the employees."

The Board agrees with the Carrier that suspension of work by employes in the presence of contract provisions for settling disputes, is a serious offense. The right to discharge employees who aid and abet illegal strike6 or work stoppages has been upheld by numerous award6 Of the Board. See Awards 14273, 16287, 19811, 19876, Second Division Award 7545, and First Division Award 22989.

There is no proper basis for the Board to interfere with the discipline imposed by the Carrier.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, find6 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 A&, as approved June 21, 1934;

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

That the Agreement was mt violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1979.