

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19811  
Docket Number CL-19695

Alfred H. Brent, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7059)  
that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of dismissal on Hyman L. Adelman, Shipper and Receiver, Juniata Shops, Juniata (Altoona), Pa., Pittsburgh Division, Central Region.

(b) Claimant Hyman L. Adelman's record be cleared of the charges brought against him on or about September 29, 1970.

(c) Claimant Hyman L. Adelman 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: The Organization contends that the Carrier violated Rule 6-A-1 of the Rule Agreement when it dismissed the claimant on or about September 29, 1970 for an offense allegedly committed on September 24 and 25, 1970. According to the Carrier, the claimant appeared at the main entrance to the Carrier's Altoona Shop on both these days bearing a sign which read "Protest Production Control Doing Union Work." Both days were regular assigned work days, although the claimant contends that he reported off for both days. As a result of this activity about 190 employees failed to appear on the first day and 220 employees were absent on the second.

A temporary restraining order was obtained by the Carrier at 7:00 p.m. on September 24, 1970 against the claimant and 15 other employees involved in the allegedly illegal picketing. When the hearing for a preliminary injunction was held on September 29, 1970 the Court refused to grant the injunction as the picketing had ceased.

The Carrier scheduled an investigation for October 7, 1970 to discuss the following charges:

"1) Failing to report for duty on your regular assignment at 7:00 a.m. on September 24 and 25, 1970 and on these days being observed illegally picketing the main entrance of the Company property at Second Street, Juniata, resulting in interference with the Company operations.

"2) Your actions on September 24 and 25, 1970 influenced your fellow employees to illegally picket the Company's property and/or not perform their assigned duties on those dates."

At the request of the claimant's representative the investigation was adjourned until October 13, 1970. After the investigation, on October 17, 1970, the claimant was advised of his dismissal. The case was rediscussed at a meeting on April 28, 1971, but to no avail, and the Director of Labor Relations reaffirmed the denial by letter on March 7, 1971. On May 5, 1971 the claimant sent a letter to Mr. J. S. Fodale, General Manager, Altoona Shops, in which he admitted he had erred and requested assistance in getting back to work. This request was also denied.

The contract between the parties contains a grievance procedure designed to provide a mechanism for the resolution of problems arising out of differences in interpretation and application of the Labor agreement. The claimant did not avail himself of these contract procedures but, instead, resorted to self-help. The record indicates the claimant's contention that the judge at the injunction hearing said that his protest was "legal" but the issue before this Board is not whether the protest was "legal in a court of law", but whether it was in violation of the Labor Agreement. This Board finds that the record supports the Carrier's finding that the claimant did, in fact, carry a protest sign which resulted in his fellow employees failing to report for work as scheduled by the Carrier.

This Board has expressed the opinion in innumerable cases. "Our function is not to substitute our judgment for that of the Carrier, or to determine what we might or might not have done had the matter been ours to handle. We are entitled to set aside the Carrier's action only upon a finding that it is so clearly wrong as to constitute an abuse of the discretion vested in the Carrier." (See First Division Award #12072 Babcock) Or again: "In discipline cases the burden is on the Carrier to prove that the guilty verdict is adequately supported by evidence; unless the Carrier's determination of Claimant's guilt is supported by a preponderance of weighty evidence, we will not support a guilty verdict. It is the penalty which we would be reluctant to alter without proof that it was arbitrary, capricious, unreasonable or unjust. In discipline cases it is in the area of penalty that we are reluctant to substitute our judgment for the Carriers." (Third Division Award 15582 House).

The record here clearly indicates that the claimant was off from work on September 24 and 25, 1970 and it is irrelevant in the context of this case whether or not he was off with permission. Although there is a grievance procedure in the contract, the claimant resorted to self-help. As a union man he knew that other employees would be influenced not to cross a picket line. The acts for which he was dismissed were clearly a breach of the fundamental employee-employer relationship of loyalty. Awards of this Board clearly recognize the propriety of disciplining employees for such individual acts of disloyalty. Third Division Award #2496, Carter, states as follows: "In this

respect we desire to point out that a Carrier has the right to expect absolute loyalty and full cooperation from its employees, otherwise the interests of the Carrier are jeopardized and the public interest is not subserved. An employee who fails to fulfill his fundamental obligations to his employer subjects himself to disciplinary action." See also Third Division Award #10930 Dolnick and #15932 Ives.

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;

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

The claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

E. H. Killen  
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June 1973.