

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19876
Docket Number CL-19970

C. Robert Roadley, 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-7233)
that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of dismissal on D. H. Bowen, Clerk in the yards at Detroit, Michigan, Northern Region, Detroit Division.

(b) Claimant D. H. Bowen's record be cleared of the charges brought against him on January 7, 1972.

(c) Claimant D. H. Bowen 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: This is a discipline case wherein claimant was dismissed from service on the grounds that he had promoted an illegal strike when he picketed and carried a picket sign at the Carrier's Livernois Yard, passed out strike literature to the Carrier's employees, and improperly used Carrier equipment (teletype) to advise the employees that a strike was to be conducted at 0600 on January 3, 1972. The purpose of the alleged strike was to force the Carrier to discuss grievance matters which were listed on literature that was being distributed by claimant at the time of the incident in question.

An investigation was held and claimant was afforded full opportunity to present his position. A careful review of the transcript of the investigation reveals the following pertinent facts:

1. Claimant did, in fact, picket the Carrier property carrying a picket sign and passing out literature designed to foment a work stoppage;
2. Such activity was not authorized by the claimant's International Union;
3. Several of the Carrier's employees did absent themselves from duty because of the picketing activity;

4. Claimant's motivation for this entire activity was to circumvent the orderly process established by statute and by agreement for the handling of grievance matters.

It is common knowledge to those familiar with the provision of the Railway Labor Act that it is a violation of the Act for employees to engage in strikes or work stoppages over grievance matters. Section 3, First (1) of the Act establishes the procedure to be followed in the handling of disputes growing out of grievances up to, and including, final and binding determination. Additionally, the Agreement between the parties has, by mutual agreement, set forth the Rules to be followed as a prerequisite to resorting to the Section 3 procedures. It is clear from the record that neither the provisions of the Act, referred to above, or the Rules in the Agreement were adhered to in this instance. This observation is compounded by the fact that the claimant was functioning as Vice General Chairman of the Organization and should have been thoroughly familiar with the required procedures referred to above.

Numerous Awards of this Board have recognized the principle that one who instigates a work stoppage is guilty of a serious offense.

Award 16287 stated, in part:

"The weight of the evidence clearly shows that the Claimant was one of the primary instigators of the work stoppage in violation of Rule 67 of the General Rules and Instructions. The punishment (dismissal) cannot be said to be arbitrary, capricious, discriminatory or unsupported by the record and in accordance with the broad latitude given Carriers by this Board, in the matter of assessing discipline, we will not upset the punishment decided upon by the Carrier. (See Award 2531, 8711, 14273, 19881)."

We concur in the reasoning set forth in the foregoing Award and find that it has equal application to the instant case. We will therefore 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 Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

Award Number 19876
Docket Number CL-19970

Page 3

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

That the discipline assessed was not arbitrary, capricious or unreasonable.

A W A R D

Claim denied in its entirety.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 27th day of July 1973.