

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20048
Docket Number CL-19796

John H. Dorsey, 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-7101)
that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1. when it assessed discipline of five day suspension on F. L. Beck, Shipper and Receiver, Samuel Rea Shops, Hollidaysburg, Pennsylvania.

(b) Claimant F. L. Beck's record be cleared of the charges brought against him on or about September 25, 1970.

(c) Claimant F. L. Beck be compensated for wage loss sustained during the period out of service.

OPINION OF BOARD: Claimant F. L. Beck held a position of Shipper and Receiver in Carrier's Material Management Department, Samuel Rea Shops, Hollidaysburg, Pennsylvania, tour of duty, 7:00 A.M to 3:00 P.M.

During the time of the dates here involved the Claimant had been in Carrier's employ for 28 years and was 52 years of age.

On September 24, 1970, Claimant -- with authority granted by an authorized representative of Carrier -- marked off work at 8:10 A.M. for the stated "Purpose: Union Business."

On September 25, 1970, Carrier served notice on Claimant charging him with the following alleged offense:

"Marking off your regular assignment for Union business at about 8:10 A.M., on September 24, 1970, and at approximately 2:55 P.M., on that date being observed illegally picketing the entrance to the Company's property at the southwest entrance, Samuel Rea Shop, Hollidaysburg, resulting in interference with the Company's operation." (Emphasis supplied)

The Investigation was held on October 7, 1970. Carrier's Investigator (Hearing Officer) found Claimant guilty as charged and imposed as discipline

a five day suspension. Successive appeals from the Investigator's findings and holding -- as provided for in Rule 6-A-1 of the Agreement -- were in each instance denied.

The pertinent provisions of Rule 6-A-1, when interpreted and applied, are controlling in the adjudication of this dispute to the extent which it is properly before us and read, with emphasis supplied:

(b) An employee charged with an offense shall be given written notice in advance of the investigation of the exact offense involved.

.....
(h) If the final decision decrees that the charges against the employee are not sustained, the record shall be cleared of the charge; if suspended or dismissed, the employee shall be reinstated and compensated for the difference between the amount he earned while out of service or while otherwise employed and the amount he would have earned had he not been suspended or dismissed.

The gravamen of the charge, supra, is the words "illegally picketing."

This Board's jurisdiction is by statute limited to interpreting and applying the terms of in being collective bargaining agreements. Section 3. First of the Railway Labor Act, as amended. We do not have judicial power to find an act or course of conduct "illegal." We have no equity powers. We may not add to or subtract from the terms of an Agreement before us. We are enjoined from giving any consideration to issues not raised on the property; nor, may we entertain evidence not contained in the record as made on the property.

Picketing, per se, is not illegal. The record before us does not include a final court order or decree or that of any other authoritative quasi-judicial body that Claimant was engaged in "illegal picketing" as unqualifiedly alleged in the charge against him. Consequently, Carrier has failed to prove --its burden--the "exact offense" which it alleged was committed by Claimant.

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

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The claim must be sustained, Carrier having failed to satisfy its burden of proof.

A W A R D

Claim sustained with Claimant to be made whole to the extent prescribed in Rule 6-A-1 (h) of the Agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulose
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1973.