

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20140
Docket Number CL-20139

Irving T. Bergman, 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-7269) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of a 15-day record suspension on G. J. Snow, Car Control Clerk, Liver-
nois Yard, Detroit, Michigan, Detroit Division, Northern Region.

(b) Claimant G. J. Snow's record be cleared of the charges brought against him on January 11, 1972.

OPINION OF BOARD: This is a discipline case in which the claimant was directed to appear for a hearing by a notice that stated the following: "--for investigation to determine the responsibility if any, in connection with your alleged participation in an unauthorized work stoppage from approximately 6:00 A.M. to approximately 8:20 A.M. at which time you were observed walking a picket line-- at approximately 7:55 A.M., --."

The Carrier has contended that two supervisory employees saw the claimant at the picketing site and observed him walking the picket line although conceding that he did not carry a sign or hand out literature. The Carrier also has argued that claimant, as a union official, should have known that the strike was illegal and that it was his duty to disperse the pickets and send them into work. The supervisory employees testified that they did not know the claimant by name and had no conversation with him when they were at the picketing location at the time they first saw the pickets or later when they returned to the area where the picketing took place. The Carrier contends that the union members knew the claimant was a union officer so that they may have felt justified to continue picketing while he was with them. In addition, the Carrier asserted that if the claimant had authority to end the picketing as he did at 8:20 A.M., then he should have done so when he arrived upon the scene.

The Organization has objected to the use of the phrase in the notice of hearing, "to determine the responsibility if any," on the ground that this is not an exact charge and constitutes a fishing expedition. Objection is also made to the fact that the decision after the hearing was made by an official of the Carrier who did not attend the hearing and was, therefore, in no position to judge the credibility of the witnesses.

Claimant testified at the hearing that he was off from work on the day in question. At approximately 6:20 to 6:30 A.M. he received a call at his home from a clerk that a message had come over the machine at the Carrier's office and that: "He seemed worried and I was requested to come down and investigate to see what's going on." Claimant arrived at the scene about 6:45 A.M. and, "found a bunch of people standing around the entrance." Continuing his testimony, claimant stated that he did not see the message and tried to find out what was going on from the employees grouped around the entrance. He further testified that at about 8:00 A.M. to 8:15 A.M., he told the men at the entrance that: "--if anybody wants to go to work, feel free to go to work, we are not going to stop you until we find out what's going on." Immediately after this announcement, according to the transcript of testimony, claimant was in his car leaving the area with another individual when the Carrier's supervisors asked him to come into the office to make a telephone call. In the transcript the message is set forth that came over the machine and prompted the clerk to telephone the claimant. The message announced the strike and advised the clerk to cooperate by leaving at the end of his tour of duty and, "by no means may you be required to stay after that time." It was signed by the Vice General Chairman who was superior to the claimant as a union officer. Although not specifically stated, the telephone call was apparently made to the Vice General Chairman.

The use of the phrase, "to determine the responsibility if any," in the notice of investigation, is directly related to the rest of the sentence which reads, "in connection with your alleged participation in an unauthorized work stoppage--." The hearing date was postponed by the Vice General Chairman to a later date. At the beginning of the hearing, claimant answered "yes", to the question: "Were you properly notified as to the purpose of this investigation?" He also stated that he was ready to proceed and that he was represented by the Vice General Chairman. We find that the Organization's objection to the purpose of the hearing as stated in the notice, is without merit, see Third Division Awards 18006, 19636.

The record does not include the objection made by the Organization in its submission that it was improper for a Carrier official to decide the merits and credibility issues if he was not present at the hearing. The Carrier has asserted that this objection was not raised in the handling on the property. Consistent with established practice and policy of the Board, we will dismiss this objection, see Third Division Award 16348.

The issue to be determined is whether or not claimant participated in an unauthorized work stoppage. To participate means to take an active part or to play a role in the work stoppage. From the transcript of the testimony at the hearing, it is apparent that claimant was in the picketing area as a union officer responding to a call from a worried union member. This is not contradicted. The message which prompted the call is in the record. It is not contradicted that at the picket line, claimant tried to find out what was going on and, unable to get a satisfactory explanation, he instructed his members to feel free to report for work. He was leaving the picket area in his car when asked to enter the Carrier's office to telephone his superior in the union. This is confirmed by the testimony of Carrier's witness.

The sum total of the testimony of the Carriers' witnesses is that they observed claimant talking to the pickets and at one time saw him walking in the picket line with no strike sign. There is no testimony that claimant prevented his members from working. There is no description of the alleged picket line to distinguish it from the "bunch of people" as described by claimant in his testimony. Carrier's assertion that claimant as a union officer knew the strike was illegal is not supported by evidence of that fact. As an assertion without proof or as inference, it is not sufficient to overcome claimant's uncontradicted testimony.

The Carrier has submitted for our consideration a number of prior Awards to support the decision in this case. With the exception of one Award which dealt with the distinction between an employee and his actions in the capacity of a union official, the decisions were based on evidence that is not applicable in this case. In those Awards, the claimants took an active part in either inciting the work stoppage, conspiring to do so or carried a picket sign and handed out literature.

In the present case, the Carrier has failed to meet the required test that there be substantial evidence in its favor. In short, the testimony of the Carriers' witnesses does not add up to participation in a work stoppage nor does the testimony present a clear picture of picketing by the claimant.

Award Number 20140
Docket Number CL-20139

Page 4

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 W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulose
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1974.