

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20143  
Docket Number CL-20164

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(  
(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-7274) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of 15 days record suspension on B. R. Comerzon Car Control Clerk, River Rouge Yard, Detroit, Michigan, Detroit Division, Northern Region.

(b) Claimant B. R. Comerzon'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 charged with participating in an unauthorized work stoppage and being observed walking a picket line. Following hearing and findings of guilt on the charge, the Carrier assessed a 15 day record suspension against Claimant.

The Petitioner seeks to have the discipline removed from Claimant's record on the grounds that: (1) the form of the notice of charge violated Claimant's due process rights; and (2) the "exact offense" charged was not proved by the hearing evidence.

The charge challenged by Petitioner on due process grounds reads as follows:

"Please appear at Room 133, Penn Central Depot, Detroit, Michigan, at 11:00 A.M., January 20, 1972, 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 the River Rouge driveway and Coolidge Avenue at approximately 7:55 A.M., January 3, 1972. If any additional witnesses are desired, you may so arrange without added expense to this company."

We find no due process deficiency in this charge. It gave clear notice that Claimant's conduct in respect to a specific incident was to be investigated. This gave Claimant sufficient information to prepare his defence and to avoid surprise at the hearing. Award 18037, 17091, etc.

We come now to the contention that the "exact offense" charged was not proved by the evidence. The hearing record shows that, from about 6:30 a.m. to 8:20 a.m. on January 3, 1972, an unauthorized work stoppage occurred at Carrier's River Rouge Yard Office, Detroit, Michigan. At 7:30 a.m. on January 3, 1972, the Claimant completed his tour of duty on the position of Car Control, Machine Clerk, River Rouge Yard Office. He testified at the hearing that, on the morning of January 3, he was unaware that there was a work stoppage or that there was a picket line at the yard office entrance. Later, though, he said that at 6:20 a.m. he read a message about the work stoppage which had been sent over the teletype by a union official. He then called a local union representative "to find out what it was about and asked if he should come down to find out what this was all about." The subject of Claimant's awareness of the work stoppage was further pursued in the following testimony:

"Q. Mr. Comerzon, you got off duty at 7:30 A.M., is that correct?

A. Right. That's when my tour of duty ended.

Q. You did not leave the yard office prior to 7:30 A.M., is that correct?

A. That's right. I did not leave.

Q. Mr. Comerzon, between the hours of 7:30 A.M. and 8:30 A.M., January 3rd, were you aware of an unauthorized work stoppage?

A. I wasn't aware.

Q. Between those same hours, on the same date did you participate in an unauthorized work stoppage?

A. I did not.

Q. I have no further questions of any of the participants if there is no further testimony to be brought out.

MR. SIBLEY

Q. Mr. Comerzon, did you state earlier that you stopped at the entrance to ask what was going on?

A. I stopped to see what was going on.

Q. What was going on?

A. Well, there were people standing at the entrance. I just stopped to see what it was all about.

"Q. Well, what was it all about?

A. It appeared that there was a picket line up. It appeared.

Q. How did it appear?

A. Just like any other picket line. I saw a sign and there was a large amount of people standing. They weren't going up in the office.

Q. What did the sign say?

A. I didn't read it."

In addition to Claimant's testimony two Carrier witnesses testified as follows:

"Mr. J. D. Bolyard, Trainmaster

"Q. Did you, during the morning of January 3rd, return to the picket line?

A. Yes, at approximately 8:30 A.M., I returned to the picket line to inform the employees holding the picket sign to contact Mr. Bowen, that the strike had been terminated.

Q. Were you accompanied by anyone?

A. Yes, I was accompanied by Mr. B. H. Estes, General Car Foreman at River Rouge.

Q. Did you at this time see Mr. Comerzon at the picket line?

A. Yes, I did.

Q. And what did you observe him doing?

A. Mr. Comerzon was with other clerical employees in that area, one of which was carrying a picket sign.

Q. Was Mr. Comerzon carrying a picket sign or handling out literature?

A. I did not observe him doing this, no."

Mr. B. H. Estes, General Car Foreman

"Q. During the morning of January 3rd, did you again return to the picket line?

"A. Yes, I did, about, approximately 8:20.

Q. And were you accompanied by anyone?

A. Mr. Jack Bolyard, Trainmaster.

Q. Upon returning to the picket line, did you observe Mr. Comerzon?

A. Yes, I did.

Q. What did you observe him doing?

A. He was walking with the rest of the clerks on the picket line.

Q. Was he at that time, or at any time, carrying a strike sign or passing out literature?

A. No.

Q. Were there strike signs posted at that time?

A. Yes, there were."

From our study of the foregoing we can only conclude that the Claimant bore witness against himself. Twice he denied awareness of the work stoppage, but in each instance he subsequently contradicted his denial by testifying to facts which unquestionably proved his awareness of the work stoppage. It is clear that he was aware of the work stoppage when he read the teletype message at 6:20 a.m.. He was thus forewarned that the course of non-involvement was to leave the area after completing his tour of duty at 7:30 a.m.; yet, he remained in the area, by his own admission, to see "what it was all about." It is true that one of Carrier's witnesses failed to put Claimant on the picket line in clear, unambiguous terms; however, Mr. Estes unequivocally stated that Claimant was walking on the picket line at about 8:20 a.m.. The testimony of Mr. Estes, coupled with that which Claimant himself gave, provides substantial evidence of record to support the Carrier's findings of guilt. Consequently, on the whole record, we find no basis for disturbing Carrier's determination and we shall 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;

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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

Claim denied.

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.