

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22560  
Docket Number MW-22697

Paul C. Carter, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees  
{ Chicago, Rock Island and Pacific Railroad Company  
{ (William M. Gibbons, Trustee)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Machine Operator C. G. Goodnight was without just and sufficient cause and exceedingly disproportionate to the offense with which charged (System File 11-D-742/L-126-1647).

(2) The Carrier shall reinstate Claimant Goodnight to his former position and accord him all the other benefits and privileges of Rule 19."

OPINION OF BOARD: Claimant was employed by the Carrier as a machine operator, with service from 1957, except for a two-year period when he was self-employed. The Carrier states that he had a continuous service dating from November 15, 1975.

On June 16, 1977, claimant was notified:

"You are hereby notified that a hearing will be held in the office of the Asst. Superintendent at Des Moines, Iowa on Thursday, July 7, 1977, at 10:00 A.M., to develop the facts, discover the cause and determine your responsibility, if any, in connection with your calling a work stoppage for yourself and other employees and refusing to return to work upon request at approximately 6:55 AM, Wednesday, June 15, 1977, at Atlantic, Iowa in violation of Rules B-D-Q and N of the Rules and Regulations for Maintenance of Way and Structures.

"Please arrange to be present with your representative, if representative is desired, and such witnesses as provided for in the Maintenance of Way Agreement."

The investigation was postponed and was held on July 21, 1977. Claimant was present throughout the investigation and was represented by the General Chairman of the Organization.

Assistant Roadmaster D. Newton testified at the investigation to the effect that he arrived at the Atlantic depot at about 6:45 a.m., on June 15, 1977, to report for work. The claimant and several other machine operators and laborers were assembled at the depot to present their expense forms. The Assistant Roadmaster testified that after receiving the expense forms he proceeded to go into the depot to get things arranged for the day. At about 6:55 A.M., claimant, acting as spokesman for the group, approached Mr. Newton with a list of grievances in his own handwriting. Mr. Newton informed claimant that he should handle such matters through his union representative, and instructed claimant and the remainder of the men to go to work. All refused to return to work. The Assistant Roadmaster then contacted Mr. L. Harper, Supervisor of Work Equipment. Mr. Harper arrived at about 7:05 A.M. He was met by the claimant and instructed claimant to go to work. Again claimant refused to do so. Mr. W. Cogdill, Manager, Maintenance of Way Equipment, was then contacted and apprised of the men's refusal to work.

Mr. Cogdill testified in the investigation that he talked to claimant on the telephone at Atlantic, and that claimant informed him that he could get nothing out of the organization and this was the way he was handling it (the grievances); that claimant informed him that he was the instigator of the work stoppage and the ringleader; that he informed claimant to go to work under the same conditions that he had previously worked under. Claimant finally went to work about 7:45 A.M.

A thorough review of the investigation reveals substantial evidence that claimant was the instigator, ringleader, and acted as spokesman for the group, which actually resulted in a work stoppage, even though not of long duration. It also establishes that the work stoppage was unauthorized.

Rule Q of the Rules and Regulations for Maintenance of Way and Structures reads:

"Q. Employees must report at the appointed time, devote themselves exclusively to their duties, must not absent themselves, nor exchange duties with, or substitute others in their place, without proper authority....."

Rule 20 of the applicable working Agreement reads:

"RULE 20. PENDING DECISION. Prior to the assertion of grievances or during the appeal as herein provided, there will neither be a shut-down by the railway nor a suspension of work by the employees."

The Board agrees with the Carrier that suspension of work by employees in the presence of contract provisions for settling disputes, is a serious offense. The right to discharge employees who aid and abet illegal strikes or work stoppages has been upheld by numerous awards of the Board. See Awards 14273, 16287, 19811, 19876, Second Division Award 7545, and First Division Award 22989.

There is no proper basis for the Board to interfere with the discipline imposed by the Carrier.

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

That the Agreement was not violated.

A W A R D

Claim denied.

ATTEST: *A. W. Pauler*  
Executive Secretary

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 16th day of October 1979.