

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24144
Docket Number MS-23764

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: (James P. Martin
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission on covering an unadjusted dispute between me and the Consolidated Railway Corp., involving the question:

The strike was used against me as an excuse to dismiss me from my 9½ years of employment. I have been singled out by ConRail without just cause.

Fellow workers (approximately 275 other union members), who stood along side of me, due to respect of the strike picket-line on September 28 and 29, 1978 were not all dismissed. Con Rail has discriminated against me as an individual. Also, their complete control and manipulation of the facts, and the lack of understanding of the facts, to what was happening and possibly why it happened.

I wish to be restored to service with seniority and all other rights unimpaired and to be compensated for wage loss sustained in accordance with the provisions of Rule 6-A-1 (d), with benefits restored."

OPINION OF BOARD: Claimant James P. Martin, a maintenance of way repairman, was charged on October 13, 1978 with:

"1. Failure to report for duty on your regular assignment at 7:00 AM, September 28 and September 29, 1978.

2. Engaging, abetting and participating in an unauthorized work stoppage at Canton MW Shop at 8:30 AM and 3:45 PM, Main entrance Division Road on September 28, 1978, 8:00 AM, Service Road entrance of Shop on September 29, 1978, 4:05 PM and 5:15 PM at Main Entrance - Division on September 29, 1978.

3. Insubordination in that you refused direct orders to return to duty from Frank Bucceri, Shop Engineer at 8:30 AM on September 28, 1978, and again from R. Campitella, Shop Engineer, at 3:45 on September 28, 1978."

A trial was held on November 3, 1978 and Claimant was dismissed on November 22, 1978. Claimant appeared at the National Railroad Adjustment Board, Third Division hearing before the Referee.

On August 30, 1979 Public Law Board No. 2420, Award No. 2 (Docket No. 410), duly constituted by the Brotherhood of Maintenance of Way Employes and Consolidated Rail Corporation, heard and determined the very Claim now being brought before this Board as follows:

"We conclude that Claimant was an unlawful striker and picketer, in serious violation of his obligations under the law and the Agreement of his Organization with Carrier and by his presence and participation with the picketers 'abetted' the others as charged by reinforcement and implementation of such activity.

Carrier is justified in rejecting Organization's contention that Claimant was not guilty of insubordination because the order given to him to cease picketing and striking was not a one-to-one order to him only but was addressed to a group of which Claimant was a member. We regard this as having nevertheless been a direct and unmistakable order from an authoritative source for a valid reason which was disobeyed and supports Carrier's 'insubordination' charge.

In sum, we find the charges convincingly sustained in such degree and kind as to justify Carrier's imposition of the subject discharge penalty on Claimant."

The Third Division in Award Number 22736 stated:

"In order to prevent chaos and multiplicity of appeals, the instant claim will be dismissed for the reason that the issue involved claim here has been determined by Public Law Board No. 2203, which is a tribunal of coordinate jurisdiction with this Division and whose decisions are, likewise, final and binding under the Railway Labor Act. This claim now being moot is dismissed for lack of jurisdiction by this Division.

In keeping with Award No. 22736 this Board lacks jurisdiction to consider this claim and this claim is barred.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of January 1983.