

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25570  
Docket Number CL-24713

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(  
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9643)  
that:

(a) Carrier violated the current Clerks' Agreement when as a result of investigation held on May 8, 1981, it assessed the record of Lowell Wiley with thirty (30) demerits;

(b) Lowell Wiley shall now have the thirty (30) demerits removed from his personal record and personal record cleared of all charges as stated in formal investigation,

and

(a) Carrier violated the current Clerks' Agreement when as a result of investigation held on May 8, 1981, it assessed the record of Robert Sharp with thirty (30) demerits;

(b) Robert Sharp shall now have the thirty (30) demerits removed from his personal record and personal record cleared of all charges as stated in formal investigation.

(The subjects contained in the Statement of Claim were handled separately on the property but since they are related to the same incident and the Carrier conducted a joint investigation, the claims are being consolidated for presentation to the Board in accordance with Circular No. 1 as amended.)

OPINION OF BOARD: An investigation was held on May 8, 1981, to determine if Claimant Wiley had violated the 2nd and 3rd paragraphs of Rule 16 and Rule 21, General Rules for the Guidance of Employees, 1978, when he and Claimant Sharp distributed a letter on April 23, 1981, to persons entering the building where Carrier offices were located. Claimant Wiley was positioned contiguous to the Michigan Avenue entrance of the building, while his companion was positioned at the Jackson Boulevard entrance. Both were wearing placards upon which was written, "Informational Picket, BRAC, Santa Fe Local 618" and were on their own time when the letter was distributed. Following the investigation, Carrier apprised Claimant by letter, dated May 25, 1981, that he was assessed thirty (30) demerits for violating the aforesaid Rules. These Rules are referenced in pertinent part as follows:

Rule 16 - 2nd and 3rd paragraphs

"Employees must not be indifferent to duty, insubordinate, dishonest, immoral, quarrelsome or vicious.

"Employees must conduct themselves in a manner that will not bring discredit on their fellow employees or subject the company to criticism or loss of goodwill."

Rule 21

"All employees are expected to conduct their outside activities and affairs so as to avoid loss or embarrassment to Santa Fe which might arise from their influence on company decisions or their knowledge of company business and plans. Employees must not have personal interests which might conflict with the interests of Santa Fe or which might influence their judgement in performing their duties.

"Outside interests or activities covered by this policy include those involving any employee of Santa Fe or the spouse, children, any relative living in the household or any other close member of the family.

"An unusual potential for conflict of interest is found in certain situations which are listed below. This list is not to be regarded as all-inclusive."

In defense of his petition, Claimant Wiley argues that Carrier violated Rules 22 and 24 of the Controlling Agreement since the collective relationship establishes legal rights and obligations which are outside the constraining purview of Carrier's jurisdiction. As the elected Division Chairman for BRAC at the Chicago Terminal Division, Claimant asserts that he was engaged in bona fide Union Organizational duties on April 23, 1981 and was paid by Union funds. He notes that he was properly granted time off to conduct Union activities and avers that the letter was distributed in accordance with inherent Union prerogatives. He maintains that the contents of the letter were neither derogatory nor unethical, but merely reflected an internal Union communications process that was singularly directed to dues paying Members. He asserts that he was not on Company property when the letter was distributed, and observes that no evidence has been proffered showing that non-railroad persons complained about the letter or his activities outside the building. He argues that he took every precaution to avoid the impression that a strike was in progress and purposely positioned himself on public property.

Carrier contends that both Claimants were on Company property on April 23, 1981, and handed the objectionable letter to anyone who entered the building. It asserts that the pivotal question herein is the content of the letter and the manner by which it was distributed. It observes that if the letter really expressed the views of the Membership, it was patently unnecessary to distribute it at the entrance to the building. It contends

that it had not received any complaints from the General Chairman or experienced an increase in grievances or perceived any other problems that indicated Union Membership discontent. It asserts that a negotiated grievance process was present for solving Union complaints and avers that it should have been used as the Agreement contemplated. It argues that a textual analysis of the April 23, 1981 letter clearly shows that it subjected the Company to criticism and a potential loss of good will that was contrary to the 3rd paragraph of Rule 16 of the General Rules for the Guidance of Employees, 1978. In essence, it contends that Claimants' actions went beyond the bounds of reasonableness and propriety.

In considering this case, we concur with Carrier's position. The legal regulatory process which legitimizes the labor-management relationship presupposes the articulation of divergent views in pursuit of partisan interests. Thus, in situations where an Employee Organization is seeking to obtain representative status, picketing and leaflet distribution are important concomitants of the dispute resolution process. The same is also true with respect to collective bargaining impasses. In both types of conflict situations, emotionalized language is a recognizable aspect of the adversarial process and the parties' messages are beamed toward the public for purposes of information and support. In the normal course of the collective relationship, when the Parties are adhering to the negotiated Labor Agreement, they utilize the grievance process to resolve questions of Agreement interpretation and application. In effect, the Parties have agreed to exchange self help, except of course under defined circumstances, such as an imminent threat to the safety and health of Employees. As part of the bilateral relationship, the Employees are bound to observe the Employer's operating rules and regulations to the extent that such rules are not in conflict with the Collective Agreement.

In the case herein, the issue pivots around the question as to whether Claimant Wiley was engaged in protected Union activity or whether he was engaged in a course of conduct that violated Carrier's General Rules. He was not barred per se from distributing materials to Union Members as they entered Carrier premises or from standing on public property during his off time. He clearly was not barred from criticizing his Employer within the bounds of the intraunion Organizational structure, or within the bounds of a normative Labor dispute. In fact, this is a healthy process in a collective relationship.

However, careful analysis of the April 23, 1981 letter does not reveal an innocuous critical tone, but an ascerbic vitriolic message. While its contents within an intraunion setting would be understandable, its dissemination to a broader public is questionable. As a purported Union communication, its random distribution to persons entering the building where Carrier offices were located went beyond the permissible limits of constructive criticism and amounted to a breach of Carrier's General Rule 16. Statements such as, "the fashionable attitude for Managers is to be virulently anti-union" and "harassment and intimidation of employees have become common and accepted practices at 80 East Jackson" are not consistent with the Rule prohibition against subjecting the Carrier to criticism. There were other forums to convey these perceptions and feelings.

The discussion and conclusions set forth in this Opinion also apply to Claimant Sharp.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

Tht the parties waived oral hearing;

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 Agreement was not violated.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1985.

