

NATIONAL MEDIATION  
BOARD

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NATIONAL RAILROAD  
ADJUSTMENT BOARD

PUBLIC LAW BOARD NO. 1128

Case No. 5  
Docket No. NFW-709  
Award No. 5

PARTIES  
TO  
DISPUTE:

UNITED TRANSPORTATION UNION - (E)  
  
ROBERT W. BLANCHETTE, RICHARD C. BOND AND  
JOHN H. MCARTHUR, TRUSTEES OF THE PROPERTY  
OF PENN CENTRAL TRANSPORTATION COMPANY

STATEMENT  
OF  
CLAIM:

L. P. Fawley, Suspended for 30 actual days account  
alleged violation of "Participating in an alleged  
work stoppage."

OPINION  
OF  
CLAIM:

On November 15 and 16, 1971, Carrier was faced  
with an unauthorized work stoppage at Elkhart,  
Indiana. In order to continue to provide service, it had to  
operate with supervisory crews. After Claimant and several  
other local chairmen were served with a temporary restraining  
order crews again made themselves available for duty.

Claimant, and others, were called to an investiga-  
tion "...to determine your responsibility, if any, in connection  
with your engaging in an unauthorized work stoppage..." Carrier  
found Claimant culpable and assessed discipline.

The Committee argues that Carrier acted without  
a proper evidentiary basis and that the assessment of discipline  
to a limited number of participants is discriminatory. Clearly  
what Carrier did was to call those thought to be the leaders to  
the investigation. The charge is framed in terms of "engaging  
in" rather than in terms of instigating which can be viewed as  
Carrier's real purpose.

Both the evidence produced and a realistic view of Carrier's purpose support the view that Carrier was concerned about Claimant's participation and encouragement. Of seven other persons charged, six were local chairmen and the seventh had identified himself as spokesman. All were disciplined and the evidence adduced showed similar involvement for all. No other persons were identified as having a similar involvement and not being subject to disciplinary action. There may be a problem of identification or semantics, but there was no discriminatory treatment since all who had taken part in the same degree were investigated and disciplined. The fact that other, less active, participants were not disciplined, does not render the action taken in Claimant's case discriminatory.

A telegram, signed by Claimant and others, was received by Carrier. It read:

"You have stated respectively that the PCRR will abide by agreements of the various employee unions. This is to notify you in excess of 200 members of the four operating unions in Elkhart are in a combined continuous meeting because the officials of the Chicago Division refuse to abide by our present eating agreement and other numerous rules. We feel that you must be unaware of this condition, otherwise this would be corrected. If you are interested in the conditions which exist here we would be happy to discuss this with you and await your reply."

Carrier, in an effort to get crews to report, called Claimant and other local chairmen and asked them to assist

in calling crews. Claimant arrived and stated that he was there for the "meeting". When apprised once more of Carrier's purpose, Claimant and the others said they would have to go to the Studebaker Pavillion (the place where the employees' "meeting" was taking place). Some time later Federal Marshals came to the Pavillion and served the Restraining Order.

Carrier put together the telegram, the attempt to meet on grievances rather than assist in getting crews in, and Claimant's presence at the meeting, to decide that he had participated in the unauthorized work stoppage. The Board would be wearing blinders not to recognize that Carrier acted on the belief that Claimant was more a than a participant. In its submission to the Board, Carrier asserted "that he did actively promote, direct and encourage such illegal walkout". Carrier also asserted that Claimant's "signature" on the telegram served to identify him as a spokesman. Although the notice of investigation and discipline was limited to Claimant's participation in the unauthorized work stoppage, the record does contain evidence which shows more than participation. The showing that he was involved in a manner which differed from employees who were not disciplined and that all employees who were similarly involved were disciplined is enough to defeat the claim that the action taken against Claimant was discriminatory.

The Committee has argued that Claimant may not be disciplined for acts done in the performance of his duty as Local Chairman. That principle may not defeat Carrier's right to discipline him for acts which are not within the scope of his duties as Local Chairman. Participation in, or the conduct of, an unauthorized work stoppage is outside the responsibility of a Local Chairman. He was not insulated from the disciplinary action by his office.

Carrier assessed discipline after a proper investigation showed, by substantial evidence, that Claimant was guilty of participation in an unauthorized work stoppage. The claim is denied.

FINDINGS: This 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 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 Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

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AWARD: Claim denied.

W. M. Edgett  
W. M. Edgett, Chairman and Neutral Member

T. E. Murphy  
T. E. Murphy, Carrier Member

G. H. Bunde  
G. H. Bunde, Employee Member

Dated: February 5, 1975