

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CONSOLIDATED RAIL CORPORATION

DOCKET NO. 418

STATEMENT OF CLAIM:

1. The dismissal of Claimant Maynard E. Buxton was unfair, arbitrary, capricious, unreasonable and without just and sufficient cause.
2. Claimant Buxton should be exonerated of all charges, restored to service, without loss of compensation, with seniority and vacation rights unimpaired, and should enjoy all those benefits which he previously enjoyed prior to his dismissal.

OPINION OF BOARD:

Claimant was tried on, found guilty of, and disciplined by discharge for the following charges:

- *1; Failure to report for duty on your regular assignment at 3:30 PM on September 28, and 29, 1978.
- *2; Engaging, abetting and participating in an unauthorized work stoppage at Canton MW Shop at 3:45 PM and 5:30 PM on September 28, 1978 and at 4:05 PM and 5:15 PM on September 29, 1978.
- *3. Influencing fellow employees to illegally picket the Company's property and/or not to perform their assigned duties in that your car was blocking Broadway Road Entrance at 5:30 PM on September 28, 1978.
- *4; Insubordination in that you refused a direct order to return to duty from R. Campitella, Shop Engineer at 3:45 PM on September 28, 1978."

The disciplinary termination was imposed on Claimant because of his alleged participation in an illegal and unauthorized strike at Carrier's Canton, Ohio, Maintenance of Way Shop on September 28 and 29, 1978 by members of Local 3050 of the Brotherhood of Maintenance of Way Employees employed there.

We have described the general circumstances of this strike and picketing situation revealed at the hearings thereon in our previous Award No. 1, as well as our opinions on certain procedural and substantive questions raised by Organization there as well as here.

Turning to the particular facts of the instant situation, the record shows:

1. It is undisputed that Claimant, an M.W. Machinist on the 3:30 PM to Midnight shift at Carrier's Canton M.W. Shop, failed to appear there for work on September 28 and September 29, 1978, while an illegal and unauthorized strike of B.M.W.E. employees was taking place at that facility on those days.

2. Claimant's explanation at the hearing held on the subject charges was that he proceeded to work at his usual time on the afternoon of September 28, but encountered a "bunch of people" at the main entrance with a strike sign on display where they stood. His further testimony is: "There were people all around talking. So I walked around ... I didn't know what to do. I didn't want to cross the picket line because there were people threatening like. There was people in one group, and another group and you heard all around 'you go across it and you are in trouble,' you know, something would happen to me, or my car, or where I lived. I was more or less

mixed up, confused, and didn't know what the hell to do. So I walked over to the beer joint and I called off ... I said I couldn't come in because of the strike."

3. Trainmaster K.W. Barkhurst testified that at 5:30 PM on September 28, he was at the Broadway Road entrance to the Canton Shop where he had been sent by management to take a photograph of vehicles that were on Con Rail property at the time because of the strikers. He took and exhibited a photograph identified by him as bearing the license number F287574. Claimant acknowledged at the hearing that this was his automobile. Mr. Barkhurst's testimony is that the automobile was blocking the roadway. He asked Claimant to move it, and the latter did so. Very shortly thereafter, Barkhurst took another photograph of Claimant standing at the Broadway Road entrance with four other individuals.

4. Assistant Division Superintendent C. Guveiyen, Sr. of Youngstown, Ohio testified that he also was at this site about 5:30 PM on September 28, 1978. He identified the photograph of the automobile and of Claimant in corroboration of the testimony of Mr. Barkhurst. Guveiyen stated that it was he who had instructed Barkhurst to take the photographs. He also stated, in response to inquiry from Claimant's representative, that the four individuals photographed were not on Carrier property.

5. Shop Engineer R. Campitella identified Claimant in the group of four individuals put in evidence. He also testified that he saw Claimant at 3:45 PM on September 28 at the main entrance to

the Canton Shop, at which time he directed the group, including Claimant, that their jobs were available for work at the Shop; the doors were open; if they did not report to work, disciplinary action would be taken. The group so addressed, estimated to be 50 or 60 in number, was standing by a strike sign propped up on a cement block in the middle of the road giving access from the entrance and the group was blocking said road. Among them was Claimant.

6. Assistant Equipment Engineer L.W. Dubois testified essentially to the same effect as and in corroboration of the testimony of Mr. Campitella, stating that he heard Campitella's instructions to the group, Claimant among them.

7. Equipment Engineer E.E. Waggoner testified that he saw Claimant on September 29, 1978 at approximately 5:15 PM at the Canton Shop main entrance road while Waggoner was there with U.S. Marshalls for the purpose of handing out court-issued restraining orders to strikers.

8. Claimant was not certain that he could identify himself as one of those in the group of four in this photograph purportedly taken of him and three others. His testimony is that he came to work on the 29th, but because of the "confusion" he encountered at the entrance that he failed to go in. He also stated that he heard "threats" in the crowd, but did not know from whom they came.

The Board concludes that Carrier was justified in deciding that Claimant was an active participant in the illegal and unauthorized striking and picketing on September 28 and 29, 1978 and that

his guilt was such in kind and degree as to justify the
discharge penalty administered.

A W A R D

Claim denied.

Louis Yagoda
LOUIS YAGODA, CHAIRMAN & NEUTRAL

Fred Wurpel, Jr.
FRED WURPEL, JR., ORGANIZATION MEMBER

N.M. Berner
N.M. BERNER, CARRIER MEMBER

DATED *September 5 1979.*