PUBLIC LAW BOARD NO. 2420

AWARD NO. 11

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CONSOLIDATED RAIL CORPORATION

DOCKET NO. 419

STATEMENT OF CLAIM:

1. The dismissal of Claimant John Huffman was unfair, arbitrary, capricious, unreasonable and without just and sufficient cause.

2. Claimant Huffman 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 subsequently disciplined by discharge for the following charges:

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

2; Engaging, abetting and participating in an unauthorized work stoppage at Canton MW Shop at 3:45 P.M. and 4:10 P.M. on September 28, 1978 and at 8:00 A.M. and 10:00 P.M. 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 truck was blocking Broadway Road entrance at 11:59 A.M.

on September 29, 1978

4; Insubordination in that you refused Two direct orders to return to duty from E. E. Waggoner, Equipment Engineer at 3:45 P.M. and 4:10 P.M. 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 opinion 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. On September 28 and 29, 1978, while the strike was going on by M.W. employees of the Canton Repair Shop, Claimant was scheduled to be at work there on his regular 7:00 A.M. to 3:30 P.M. tour of duty but did not report for such duty on both days. Claimant testified that his reason was: "Well, no one was, so I wasn't." He further testified that he did not on either day attempt to stop anyone from going into work physically or verbally.

2. Claimant acknowledged that he was present at the times

stated in the charges on September 28 and 29 at the plant entrances where strikers and picketers were congregated and his truck was parked at the plant entrance. The latter fact was supported by a repairman helper who was called as a witness by Claimant. Said witness stated at one point that the truck was stationed in a manner partially blocking the entrance.

3. Claimant also testified that he was in the area at different times because his father lives nearby and he passed the plant area in visiting him "quite often" and also, "I had a lot of business there". He acknowledged, however, that his residence is in Mineral City, about 20 miles from the area and that he visited the picket line for at least an hour on one of the occasions.

4. Equipment Engineer Waggoner testified that he saw Claimant among the strikers and picketers at the shop's main entrance at 3:45 P.M. and then again at approximately 4:10 P.M. on September 28, 1978 near a strike sign. At this time he told Claimant and the three others with him that they were engaging in an illegal strike and that if they did not desist from doing so, they would be subject to drastic action.

5. Mr. Waggoner further testified that he saw Claimant again at approximately 10:00 P.M. on September 29th at the Broadway Road entrance to the shop, with strike sign on display among the group in which Claimant was a participant.

6. This testimony was confirmed by Assistant Engineer R.E. Gray, who testified that on September 28, 1978 he accompanied

Mr. Waggoner to the Broadway Road entrance, and at approximately 4:10 P.M. saw there Claimant and three other strikers and heard Waggoner inform this group that they were engaged in an illegal strike and would be subject to discipline if they failed to return to work. He also affirmed that an "On Strike" sign was displayed at the site.

7. Mr. Gray further testified that he also was present at 10:00 P.M. on September 29th at the Broadway Road entrance and there saw Claimant again with strikers. But this time they were taking the strike signs down (the court injunction papers having been served).

8. Testimony was also given by Cost Analyst D. A. Masucci that he also saw Claimant at the Broadway Road entrance on September 28, 1978 and again at about 8:00 A.M. September 29, 1978 among a group of strikers and picketers.

Although the evidence shows only one refusal by Claimant of direct orders to return to work, rather than the two which are specified in the charge, the evidence is substantial and entitled to belief by Carrier that (a) Claimant was a picketer and striker, (b) he contributed to and strengthened the picketing activities in this illegal and unauthorized stoppage, in violation of the Agreement between his Organization and Carrier. This constitues a showing of seriously impermissible behavior of a degree and kind supporting Carrier's charges to the extent of justifying the termination penalty which was imposed.

A W A R D

Claim denied.

LOUIS YAGODA, CHAIRMAN & NEUTRAL

FRED WURPEL, JR., ORGANIZATION MEMBER

N.M. BERNER, CARRIER MEMBER

DATED November 2, 1979.