

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

Docket No. 423

STATEMENT OF CLAIM:

- a) The Carrier violated the Rules Agreement, effective December 16, 1945, as amended, particularly Rules 5-A-1, 5-B-1 and the Absenteeism Agreement of January 26, 1973, when it assessed discipline of dismissal on M.W. Repairman D.L. Dolph, November 22, 1978.
- b) Claimant Dolph's record be cleared of the charge brought against him on October 13, 1978.
- c) Claimant Dolph be restored to service with seniority and all other rights unimpaired and be compensated for wage loss sustained in accordance with the provisions of Rule 6-A-1(d), with benefits restored.

OPINION OF BOARD:

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

1. Failure to report for duty on your regular assignment at 7:00 AM on September 28, and September 29, 1978.
2. Engaging, abetting and participating in an unauthorized work stoppage at Canton MW Shop at 8:30 AM, 8:50 AM, 3:20 PM, September 28, 1978, at Main Entrance Division Road and at Broadway Road on September 29, 1978 at 5:30 PM.

3. Insubordination in that you refused a direct order to return to duty from Frank Bucceri, 1st Trick Shop Engineer, at 8:30 AM 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. It is not disputed that Claimant failed to appear for his regularly scheduled work on the 7:00 AM to 3:30 PM shift on September 28 and 29, 1978, or at any other time during these two days of an illegal and unauthorized strike conducted by employees of Local 3050, Brotherhood of Maintenance of Way Employees, of which he was, at the time, an officer.

2. Testimony was given by Shop Engineer F. Bucceri that on

September 28, 1978 he appeared at about 8:30 AM at the Mahoning Road entrance to the Canton MW Shop (the so-called Main Entrance) and saw congregated about it a large number of individuals and also parked cars. He recognized Claimant as among those in the gathering, and he read to the group, including Claimant, a statement that they were taking part in an unauthorized strike and were directed to come in to work. No one, including Claimant, complied. This testimony was corroborated in the testimony of Assistant Equipment Engineer Muir, who stated that he was there and heard Mr. Bucceri's statement to Claimant and the rest of the group.

3. Testimony was given by Superintendent A. Gottsabend that he appeared at the same scene about 20 minutes later with Mr. Bucceri for the purpose of getting Mr. Risaliti, President of the Local, to come to his office in order to speak by phone with W.G. LaRue, Organization's General Chairman. At the same time, Mr. Gottsabend asked that one of the Union grievance men join them and, noticing Mr. Dolph, suggested that it be the latter. They both accompanied Gottsabend to his office. There he called Mr. LaRue and put Messrs. Risaliti, Bucceri and Claimant at a telephone extension.

Mr. Gottsabend's testimony of this conversation is that Mr. LaRue instructed the Union officers and Mr. Gottsabend that they should proceed to the group of strikers and inform them that they were

engaging in a wildcat strike, "in no way" authorized by the Pennsylvania Federation of the Brotherhood of Maintenance of Way Employees, and that if they did not return to work, they could be subject to discipline. Mr. Gottsabend's further testimony is that at the end of that call, the Union functionaries and himself proceeded to the group of strikers and advised them of the statement of Mr. LaRue. His further testimony is that the information was met by boo's and cat-calls. Mr. Gottsabend quotes himself as then announcing to the group that a Court injunction would be applied for and served.

Mr. Gottsabend replied in the affirmative when asked, at the trial by Mr. Dolph, whether he (Dolph) "tried to help" him in this matter.

Mr. Gottsabend testified further that he was again at the Mahoning Road entrance to the Canton MW Shop at approximately 3:20 PM on September 28. At first, he had some difficulty in driving through the gathering because his way was blocked, but the group gave way and as he proceeded, he "saw a man on my side coming towards the car in a very unstable position by the manner in which he was walking." This individual then came over to Gottsabend's car, leaned against it, and demanded to know from Mr. Gottsabend where he was going. The latter stated that he was going into the Shop and that he was in charge there. The other, speaking in a "thick tongue", called Mr. Gottsabend by name and "offered to show him the way." Mr. Gottsabend asked him to step

out of the way, but just as the latter did and the car got slowly underway, another individual obstructed it on the other side; and, after the car drew to a stop, "banged some kind of a banner" against its roof. Claimant Dolph then came over, pulled the man away and apologized to Mr. Gottsabend.

4. Testimony was given by Shop Engineer R. Campitella that at approximately 5:30 PM on September 29, 1978, he visited the Broadway Road entrance to the Shop and observed Claimant there talking to other employees.

5. Claimant's version of these events is as follows:

a) While en route to his regular assignment on the mornings of September 28, he found the entrance to the property blocked by men "milling around" with a strike sign. He proceeded no further because of apprehensions concerning his safety.

b) The same was true the next day. Claimant admitted, however, that he was also present among a group of picketers at 3:20 PM on September 28 and at 5:30 PM on September 29, this time at another entrance, that of Broadway Road. He explained the latter by the single word "curiosity." Asked whether he had been given orders by Mr. Bucceri to return to work at 8:30 AM on September 28, Claimant responded, "Personally, no", obviously referring to the fact that Bucceri's statement had

been addressed to the group of which Claimant was a part rather than to him.

In spite of the Claimant's having relayed to the striking group the instructions given to him by his Organizational superior that they were engaging in an illegal strike, the fact is that he was one of said illegal strikers and picketers both before and after he made this announcement. In this he severely defaulted in carrying out in good faith his responsibilities adhering to his official identity as part of the Union entity which was signatory to the Agreement (and thus to his role as one of the underwriters to the carrying out of its terms), but more than that, by his presence and actions he served unavoidably to give Union status and sanction to the illegal activities in contradiction to the information he had received and conveyed that the Brotherhood officials with greater authority than he had disowned the strike and had asked him to terminate it. These actions contradicted and belied his words and could not help to serve as encouragement to the others to ignore them. Because of this, we cannot find Claimant to have absolved himself of participation in the strike and picketing but, rather, because of his persistence in its participation, given his status (and the derogation he thereby cast on the words uttered by him), to have encouraged it.

Claimant deserves credit for having dutifully uttered the words declaring the strike unauthorized and also for having, in one known

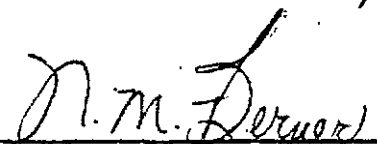
instance, discouraged violence by a picketer against the plant superintendent or his vehicle. But these cannot cancel out the fact that he, himself, was an active striker and picket and, unavoidably, because of his Union status and the official information given to him by his Union and the order given to him by management on the picket line, was a fully-informed, knowing and purposeful participant in and encouraging exemplar of the illegal and unauthorized activities of September 28 and 29, 1978.

A W A R D

Claim denied.


LOUIS YAGODA, CHAIRMAN & NEUTRAL


FRED WURPEL, JR., ORGANIZATION MEMBER


N.M. BERNER, CARRIER MEMBER

DATED

December 5, 1979