

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

vs.

CONSOLIDATED RAIL CORPORATION

Docket No. 424

STATEMENT OF CLAIM:

- a) The Carrier violated the Rules Agreement, effective December 16, 1945, as amended, particularly Rules 5-A-1, 5-E-1 and the Absenteeism Agreement of January 26, 1973, when it assessed discipline of dismissal on MW Repairman L.H. DePan, November 22, 1978.
- b) Claimant DePan's record be cleared of the charges brought against him on October 13, 1978.
- c) Claimant DePan 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 for the following charges:

- 1. Failure to report for duty on your regular assignment at 7:00 AM, September 28 and 29, 1978.
- 2. Engaging, abetting and participating in an unauthorized work stoppage at Canton MW Shop at 8:30 AM and 3:45 PM on September 28, 1978 and at 11:45 AM 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 you caused a work stoppage on Surfacing Gangs ST 241 and ST 242 at Mile Post 32.5 on the Bayard Branch East of Salinesville, Ohio, at 11:45 AM on September 29, 1978.
4. Insubordination in that you refused two direct orders to return to duty; from Frank Bucceri, Shop Engineer, at 8:30 AM on September 28, 1978 and 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 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 and perform his scheduled work as a first trick Repairman at the Canton Maintenance of Way Shop on September 28 and 29, 1978. His testimony is that he appeared at his customary entrance gate on each of these

days in time to go to work but did not because he encountered there picketers and a strike sign, "and I wasn't going to cross the picket line." His further testimony is that he attempted to phone in at three different times on the 28th, but each time the line was busy. He did not attempt to phone in on the 29th.

2. Shop Engineer F. Bucceri testified that on September 28, 1978, at about 8:30 AM, he addressed an order to a group of strikers at the main entrance of Shop, Claimant among them, to come back to work. Claimant did not obey said order. According to Mr. Bucceri, at the point at which these individuals were assembled there was an "On Strike" sign near them. Mr. Bucceri's recall of his instructions to the group was to the effect that they should report to work, as it was an illegal strike and action would be taken if they did not.

3. The testimony of Mr. Bucceri was supported by Assistant Equipment Engineer H.F. Reedy, who states that he was also then present. Reedy further testified that the roadway at the entrance was partially blocked by the picketing group.

4. Shop Engineer R. Campitella testified that he saw Claimant at about 3:45 PM on September 28 at the main entrance road among a group of strikers with a strike sign in the middle of the road "and men milling around on the streets." Mr. Campitella further states that he told the group, including Claimant, that their positions

or jobs were "down there"; the doors were open; if they did not report to duty, disciplinary action would be taken.

5. Assistant Equipment Engineer DuBois testified that he was also present at 3:45 PM on September 28 at the main entrance, in company with Mr. Campitella, and heard him make the statements testified to by him. He recognized Claimant as walking around in the group with the others who "had the whole area blocked off" while a strike sign was attached to a utility pole nearby and another stuck in a concrete block at the site.

6. Testimony was also given by Supervisor-Production G.A. Bennett that on September 29, 1978, while he was supervising two track gangs doing razing work at Bayard Branch in the vicinity of Salinesville, Ohio, about 28 or 29 miles from Canton, he learned of a van that had come on Company property at that site, with four men in it. At about 11:45 AM he proceeded to the van which was about a half-mile away, near a place at which one of the razing gangs was at work. He recognized one of its occupants - an employee named F. Safreed, a Repairman at Alliance, and asked him that he was doing there. According to Bennett, Safreed informed him that Conrail was on strike and that those in the van were going around to stop work to spread the strike. As part of this mission, they were going to certain other locations "to get all the trains stopped to make the strike a success." Safreed then introduced the other occupants of the van to Bennett. At the trial, Bennett

identified Claimant as the driver of the van and one of those to whom he had been introduced.

According to Bennett's further testimony, after those in the van talked to members of one of the track crews of the strike, seven to nine men left their machines and "started hollering and screaming that they were on strike and weren't going to work, wanted to go home, things of that nature." Mr. Bennett's testimony is that he heard Claimant make a statement to the crew members that the visitors were on strike and that they wanted the work to stop here, in confirmation of statements made to others by Mr. Safreed, spokesman for those in the van. Bennett then instructed the employees to put their machines in the siding, ending their assignment.

7. Mr. Bennett's testimony was corroborated by Assistant Track Supervisor R.W. Pennell, who stated he was present with Bennett at that time and place.

8. Organization presented as a witness, S. Risaliti, Repairman Painter at Canton and President of the Union at the time of these events. Mr. Risaliti had been identified in previous testimony as having been with Claimant at the Salinesville, Ohio Bayard Branch, Mile Post 32.5 at approximately 11:45 AM, on September 29, 1978. He confirmed in his testimony that he was in the van with Claimant at that time and place. He stated that he had gone there with Mr. Safreed to show him the way and had asked Claimant for use of Claimant's van

because it had sufficient seating accommodations for those going. His purpose in making this trip was because "we thought that some of the men in my Local were supposedly going to and might have started some kind of trouble."

When the van got to Salinesville, the men encountered Mr. Bennett, who was introduced to Mr. Risaliti by Mr. Safreed, who told Bennett that he had come there because he had heard that some of the strikers "might have been down here" and that he did not want them "involved in any kind of work stoppage in any other areas...that they could get in trouble if they did."

According to Mr. Risaliti's further testimony, Mr. Bennett responded that if there might be trouble, he thought that it would be best for him to shut down his gang and pull them back to Salinesville. The group then left, having been there 5 to 10 minutes. When the group left, the men and machines were still working. Mr. Risaliti stated that he had said nothing to the men working there, either advising them to join the strikers or cautioning them not to join them. He recalled that Claimant said something while the conversation was going on between him and Mr. Bennett, but couldn't make out what it was because there was so much noise going on.

The Board concludes that Carrier had ample grounds for deciding that the more credible and convincing evidence was that of

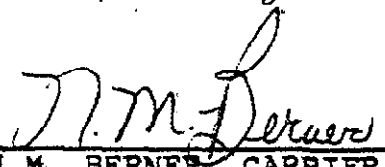
guilt was such in kind and degree as to the charges on which tried that the penalty of dismissal was a valid and entitled recourse of Carrier in reaction thereto.

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.