

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs

CONSOLIDATED RAIL CORPORATION

DOCKET NO. 425

STATEMENT OF CLAIM:

1. The dismissal of Claimant Douglas L. Pedan was unfair, arbitrary, capricious, unreasonable and without just and sufficient cause.
2. Claimant Pedan 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 7:00 A.M. on September 28, and September 29, 1978.
- 2 - Engaging, abetting, and participating in an unauthorized work stoppage at Canton MW Shop at 8:30AM and 8:55AM, on September 28, 1978 and at 4:05PM, 5:30PM 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 were picketing at Broadway Road Crossing at 8:55AM on September 28, 1978.
- 4 - Insubordination in that you refused a direct order to return to duty from E.T. Daley Field equipt. Engineer at Broadway Road Crossing at 8:30AM 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 not disputed that Claimant did not appear for or carry on any of his scheduled work on his first trick (7:30 A.M. to 3:30 P.M.) M.W. Repairman Helper's job at the Canton M.W. Repair Shop, on September 28 and 29, 1978.

2. Field Equipment Engineer E.T. Daley testified that when he came to work at the Canton M.W. Shop on September 28 and 29, 1978, he saw Claimant among a congregation of strikers either at the Broadway Road entrance or the entrance at Mahoning Road of the Shop. In addition, Daley then went to the Broadway Road entrance at the direction of management, arriving there at about 8:30 A.M. and, pursuant to his instructions, gave a direct order to the employees assembled there, among whom he recognized Claimant, to return to work or vacate the premises. None, including Claimant, did either.

3. Assistant Cost Analyst J. Blaser testified that he participated with Mr. Daley in directing the employees to end their unlawful strike, and they were accompanied also by Equipment Engineer H. Reedy. He confirmed Mr. Daley's testimony that the latter had given such an order to a group which included Claimant. He further testified that the picketers were blocking the road entrance to the yard.

4. Assistant Division Superintendent C. Guveiyian testified that on September 28, at approximately 8:45 A.M., he and Master Mechanic R.E. Brickley arrived at the Broadway entrance to the Canton facility. There he recognized Claimant and told him that he was participating in an illegal strike and that if he continued to do so, "there may be disciplinary action taken upon himself." His further testimony is that he asked Claimant whether he was picketing and Claimant answered in the affirmative, and, in response to further questioning, that he had been ordered to do so by the President of the Union. He further testified that Claimant tried to prevent Guveiyian and Brickley from crossing the picket line to enter the plant. Also, that at the location where the group, including Claimant, had stationed itself three feet square was on display.

5. Master Mechanic Brickley testified to the same general effect, stating that he took a photograph of Claimant on the picket line. The photograph was put into evidence.

6. Shop Engineer R. Campitella testified that on September 29,

1978 at approximately 5:30 P.M. he saw Claimant among the picketers congregated at the Broadway Road entrance to the facility.

7. Equipment Engineer Waggoner testified that he too saw Claimant among picketers at the Broadway Road site about 5:30 P.M. with a strike sign displayed nearby.

8. A procedural objection alleging lack of a fair and impartial hearing is raised by Organization in that (a) when Claimant was asked early in the trial whom he wanted to represent him, he named two District Chairmen, Messrs D. Wheeler and S. Sloboda, (b) when asked which of these he wished to act as his spokesman, Claimant responded that he wished both to take part in the interrogation of witnesses and the giving of argument, (c) the hearing officer said that only one active spokesman would be permitted and asked Claimant so to choose, (d) Claimant and Representative Sloboda thereupon asked for a postponement of trial inasmuch as they regarded such procedure as denying Claimant a fair trial, Mr. Sloboda later amending this to ask for a mistrial, (e) trial then resumed, but shortly thereafter, Claimant and both of his representatives left and the trial proceeded in their absence.

We have encountered a similar procedural situation in our previous Awards and have commented and ruled on such therein. We make the same ruling here, that is, that there has been no showing of failure to make reasonable and proper attempt to afford Claimant a fair and impartial trial, either under the procedural conditions permissibly established by hearing officer and those thereafter

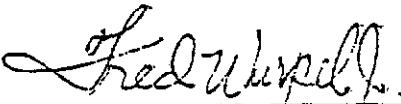
created by the unnecessary and voluntary withdrawal of Claimant and his representatives. Accordingly, Claimant's motion that claim be sustained on grounds of procedural violation in trying them is denied.

As to the merits of claim, we find that Carrier had just and sufficient cause in kind and degree in respect to the charges on which Claimant was tried to conclude that imposition of discharge discipline was appropriate.

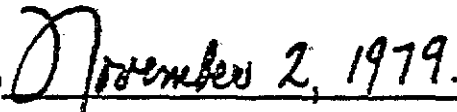
A W A R D

Claim denied.


LOUIS YAGODA, CHAIRMAN & NEUTRAL


FRED WURPEL, JR., ORGANIZATION MEMBER


N.M. BERNER, CARRIER MEMBER

DATED  November 2, 1979.