

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CONSOLIDATED RAIL CORPORATION

DOCKET NO. 410

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 J.P. Martin, November 22, 1978.

b. Claimant Martin's record be cleared of the charge brought against him on October 13, 1978.

c. Claimant Martin 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 subsequently discharged by Carrier for the following charges:

1. Failure to report for duty on your regular assignment at 7:00 AM - September 28 and September 29, 1978.
2. Engaging, abetting and participating in an unauthorized work stoppage at Canton MW Shop at 8:30 AM and 3:45 PM Main Entrance Division Road on September 28, 1978. 8:00 AM, Service road entrance of Shop on September 29, 1978. 4:05 PM and 5:15 PM at Main Entrance - Division on September 29, 1978.

3. Insubordination in that you refused direct orders to return to duty from Frank Bucceri, Shop Engineer at 8:30 AM on September 28, 1978, and again from R. Campitella, Shop Engineer, at 3:45 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 350 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 stated 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. Claimant testified that on September 28, 1978, he arrived at his usual time at the main entrance of the facility usually used by him to commence work on his regular 7:00 AM to 3:30 PM work tour "prepared to work", but "there was a [strike] sign up. So I didn't cross the sign." He further acknowledges that he stationed himself among the group of strikers and picketers. When asked, "For what purpose were you at this location?" referring to the times of 8:30 AM

and 3:45 PM, Claimant responded, "I was curious to find out about work."

2. Claimant further acknowledged that he desisted from coming in to work again on September 29, 1978 and joined a group of employees who were abstaining from work and were stationed as pickets on the main road entrance to the Canton Shop on September 29th at about 4:05 PM and 5:15 PM.

3. Claimant also acknowledged at the hearing that he was one of those gathered at the Canton shop main entrance on September 28th at about 8:30 AM whom F. Bucceri, Shop Engineer, Carrier's MW shop, ordered to return to work. According to Bucceri's testimony, supported by other witnesses, the group was partially blocking the main entrance at the time, a strike sign was present among them, and he recognized Claimant Martin as one of those to whom he gave these instructions. Claimant admits that he did not obey these instructions, giving as his reason at the hearing, "I wasn't working the afternoon shift. I didn't think it applied to me." He admits, however, that he desisted from work the next day also.

4. Testimony was given by R. Campitella, Shop Engineer, and supported by others that, pursuant to management's instructions to him on September 28, 1978 at approximately 3:45 PM, he went to the

main entrance of the road into the shop, where he saw a group of employees "milling about" near a strike sign placed in a concrete block and that these individuals were partially blocking the road to the plant. In completion of the orders given to him, Mr. Campitella instructed the group there gathered that, "this was an unauthorized strike and the doors were open; their positions were down there; if they did not report to duty, disciplinary action would be taken." Campitella's further testimony is that he recognized Claimant Martin as a member of that group while Campitella was reading said orders to them.

5. Mr. Campitella further testified (and was again supported by other testimony) that he again saw Claimant Martin at 4:05 PM and at 5:15 PM on September 29th at the main entrance as part of a group of employees again "milling around" and partially blocking the entrance road and with a strike sign nearby.

6. Claimant admitted at the hearing that he was present among the congregation of strikers and picketers at about 5:15 PM on the 29th when he received, as did others, an injunction notice from a U.S. Marshall.

7. D. A. Masucci, Cost Analyst for Carrier at Canton, testified that at approximately 8:00 PM on September 29, 1978, he

was at the Service Road entrance of the facility pursuant to instructions to him by management and saw Claimant seated in a truck with two others who had desisted from work that day. Assistant Equipment Engineer D.P. Sandtrok who accompanied Masucci testified to the same effect.

8. In his own testimony, Claimant admitted that at the time he was seated in the truck, there was an unauthorized strike going on and that he was there to explain to anybody who asked "that there was a strike in sympathy with N&W" (a reference to the fact that the stoppage was called in sympathy with the delay experienced by another organization in effectuating a contract change with the Norfolk & Western Railway), but that no one would stop them if they wanted to go on the property.

We conclude that Claimant was an unlawful striker and picketer, in serious violation of his obligations under the law and the Agreement of his Organization with Carrier, and by his striking and by his presence and participation with the picketers "abetted" the others as charged by reinforcement and implementation of such activity.

Carrier is justified in rejecting Organization's contention that Claimant was not guilty of insubordination because the order

given him to cease picketing and striking was not a one-to-one order to him only but was addressed to a group of which Claimant was a member. We regard this as having nevertheless been a direct and unmistakable order from an authoritative source for a valid reason which was disobeyed and supports Carrier's "insubordination" charge.

In sum, we find the charges convincingly sustained in such degree and kind as to justify Carrier's imposition of the subject discharge penalty on Claimant.

A W A R D

Claim denied.


LOUIS YAGODA, CHAIRMAN & NEUTRAL


FRED WURPEL, JR., ORGANIZATION MEMBER


N.M. BERNER, CARRIER MEMBER

DATED

August 30, 1979