

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
and  
CONSOLIDATED RAIL CORPORATION

DOCKET NO. 428

STATEMENT OF CLAIM:

- (a) The Carrier violated the Rules Agreement, effective December 16, 1945, as amended, particularly Rules 5-A-1, 5-C-1, 5-E-1 and the Absenteeism Agreement of January 26, 1973, when it assessed discipline of dismissal on M.W. Repairman Larry D. Tasker.
- (b) Claimant Tasker's record be cleared of the charge brought against him on October 20, 1978.
- (c) Claimant Tasker 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 disciplined by discharge for the following charges:

- 1 - Failure to report for duty on your regular assignment at 3:30 PM on September 28 and September 29, 1978.
- 2 - Engaging, abetting and participating in an unauthorized work stoppage at Alliance Yard & MW Shop at 6:30 PM on September 28, 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 the Webb St. Alliance entrance at 6:30 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 undisputed that Claimant failed to appear for work on September 28 and 29, 1978 at the Canton Maintenance of Way Shop where he was employed as a 3:30 P.M. to Midnight Repairman.
2. In his testimony on the subject charges at the trial, Claimant's explanation of his absences was that he proceeded to the plant property at his usual time on September 28, 1978, but when he got to the entrance, " ... there was a picket sign up; and I wasn't, you know, going to cross no picket sign. I have a family to take care of; and because of their safety, I went up and I called off".
3. As for September 29, he testified that he did not report to work because his vehicle was wrecked that morning and he was busy attending to it, but he "forgot to call in".

4. Trainmaster S.C. Ingram testified that he observed Claimant at approximately 6:30 P.M. on September 28, 1978 standing in the roadway with another striker at the Webb Street entrance to Carrier's Alliance Yard, about 17 miles from the Canton Shop., where there were a number of strike signs placed along the driveway. He learned the identity of Claimant by asking his name and further identified him at trial. Ingram's further testimony is that he asked Claimant what he was doing there, and he responded "they were picketing in sympathy of the N and W". Ingram ordered them to clear the driveway of a vehicle in the road which belonged to them, in order to remove the obstruction to traffic which this caused and they did so.

The picketers then asked permission to use the lavatory in the shop and also get some coffee there. Ingram allowed them to do so after cautioning them against making trouble or causing damage. After they entered for these purposes, they later came out again and resumed their stations at the Webb Street entrance.

Ingram's further testimony is that he observed Claimant playing an active part in influencing others by his picketing and striking activities; and when Ingram left the plant at about 10:00 P.M. that evening, he saw Claimant still stationed at the road crossing. But he also responded in answer to another question that he saw no employee passing in or out of the plant at the time that the two individuals were stationed at the entrance or attempting such ingress or egress.

5. In his own testimony, Claimant stated, in respect to his presence at the Alliance property:

a. He lives in Alliance, his father who works for ConRail came by his house at about 6:00 P.M. and told him that "they were having some kind of trouble" at the Alliance facility. Claimant thereupon decided to find Vice Chairman Frank Lecce. He failed to find him.

b. However, Claimant wanted to see what was happening and drove to the Alliance entrance and stayed there approximately forty minutes to an hour. When he arrived there, "some gentleman" walked up and asked him his name. Claimant told him, and the inquirer walked away, Claimant leaving the place shortly thereafter and not returning.

c. When asked at the trial what he was doing in Alliance, Claimant responded, "The main thing I was looking for Mr. Lecce, plus I was curious to see what was happening...". He denied that he was participating in an unauthorized work stoppage or attempting to influence employees either to picket the property illegally or desist from performing their assigned duties. He stated also that no one else was with him at the Webb Street entrance.

d. In respect to Ingram's testimony concerning Claimant's "using the bathroom facilities and stuff like that", Claimant's only comment was, "I have no idea about that. I don't know what went on".

e. Claimant further stated that when he arrived at the Webb Street entrance, he observed strike signs there, but he had nothing to do with the construction of them. When he arrived at the site, he observed about seven or eight others congregated around the area.

f. Claimant denies that he told Ingram at any time that he was picketing. He recalled being asked by Mr. Ingram what he was doing there and told him that "I heard that something was going on down here; and I was just down

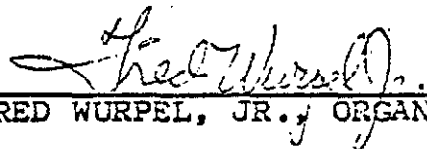
because I was curious to see what was happening".

We find that Carrier had material basis on which to decide that Claimant was guilty in such kind and degree of the charges on which he was tried so as to justify imposition of the discharge discipline.

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