

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CONSOLIDATED RAIL CORPORATION

DOCKET NO. 430

STATEMENT OF CLAIM:

1. The dismissal of Claimant John E. Gamble was unfair, arbitrary, capricious, unreasonable and without just and sufficient cause.
2. Claimant Gamble 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 by Carrier for the following charges:

1. Failure to report for duty on your regular assignment at 3:30 p.m. on September 28 and 29, 1978.
2. Engaging, abetting and participating in an unauthorized work stoppage at Canton M of W Shop at 3:45 p.m. and at 5:30 p.m. on September 28, 1978 and 4:05 p.m. and 5:15 p.m. 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 your truck was blocking Broadway Road Entrance at 5:30 p.m. on September 28, 1978.

4. Insubordination in that you refused a direct order to return to duty from R. Campitella, Shop Engineer, at 3:45 p.m. on September 28, 1978.

The disciplinary termination imposed on Claimant was 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 undenied that Claimant did not appear for or perform any work on his scheduled 3:30 p.m. to midnight shift at the Canton MW Shop on September 28 and 29, 1978.

2. Assistant Equipment Engineer L. W. Dubois testified that he saw Claimant as one of a group of men on September 28, 1978, at about 3:45 p.m. at the main entrance to the shop engaged in blocking the roadway for ingress into the shop, with strike signs displayed

near them. He further testified that he again saw Claimant under the same conditions at the same place at about 4:05 p.m., September 29, 1978. Mr. Dubois testified that he also witnessed and heard during his September 28th observation of Claimant in the striking and picketing group, instructions given by Carrier's spokesman Campitella to the group, including Claimant, to return to work.

3. Train Master K. W. Barkhurst testified that, in company with Assistant Superintendent Guveiyian, he observed two cars and two trucks blocking access to the property at the Broadway Road entrance to it. In connection with this observation there was introduced a photograph taken there and then by Mr. Barkhurst in which he identified Claimant as at the site. Barkhurst's further testimony is that he then asked Claimant to move the truck and he did. He pointed out that there was an "on strike" sign attached to the door of the truck. After moving the truck, Claimant came back to the site with a group of people who "blocked access to the road bodily."

4. Assistant Superintendent Guveiyian testified that he accompanied Barkhurst to the Broadway Road entrance at 5:30 p.m. and his testimony essentially corroborates that of Mr. Barkhurst.

5. Equipment Engineer E. E. Waggoner testified that on September 28, 1978 he observed a group at the main entrance to the plant, among them Claimant, "milling around" there with picket signs

on display at 11:15 p.m. and at 5:15 p.m.

6. Claimant admitted that he did not go into work on the days in question but stopped outside the roadway entrances, because he there encountered a picketing throng, among them two gentlemen from the NW Railroad (with whose employees the strike was called in sympathy) and he heard statements "being made that houses were burned, children were hurt, such things as this" by the two NW visitors, which he took to be implied threats by these two against the hundred or so individuals gathered there.

He admitted being present at the other times testified to but only for short periods of time to see what was happening. He further stated that the first knowledge he had that the strike was unauthorized was about 6 or 7 p.m. on the evening of the 29th. He also denied that his truck was blocking the road; he regarded it as parked along the highway right-of-way, but did not deny that at the time of the truck incident he had remained on the Broadway Road for approximately an hour and one-half to 2 hours. This was for the purpose of ascertaining "whether we could go back to work or not."

Claimant acknowledged that two or three representatives of Carrier came to the picket line while he was there but he denied receiving a "direct order" from any of them telling him to return to work. Concerning any mention by them that this was an unauthorized

strike, he testified: "No sir. I really don't believe they did. I don't believe they mentioned that..." Claimant also testified that he called the plant on both the 28th and 29th that he would be absent.

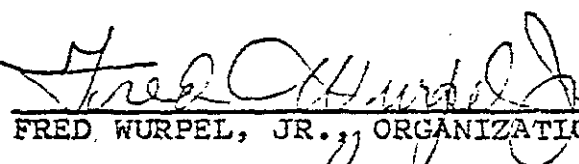
We find that Carrier was justified (a) in finding Claimant a striker and participant in the picketing activities of September 28 and 29, 1978, (b) in finding Claimant's explanation of complying in this because of fear not a credibly extenuating factor when considered with the evidence of the degree and extent of Claimant's participation in the activities. Carrier was also entitled to assign credibility to testimony showing Claimant to have received and disobeyed orders to return to work in cessation of his illegal activities.


In sum, Carrier was entitled to conclude that Claimant was guilty to a degree and kind of the subject charges, justifying imposition of the discharge penalty.

A W A R D

Claim denied.


LOUIS YAGODA, CHAIRMAN & NEUTRAL


FRED WURPEL, JR., ORGANIZATION MEMBER


N.M. BERNER, CARRIER MEMBER

DATED

October 5, 1979