

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

Docket No. 431

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 Repairman Helper D.N. Grimm.
- b) Claimant Grimm's record be cleared of the charges brought against him on October 13, 1978.
- c) Claimant Grimm 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 on September 28 and 29, 1978.
- 2. Engaging, abetting and participating in an unauthorized work stoppage at Canton MW Shop at 8:30 AM, 3:45 PM, 4:10 PM on September 28 and 8:00 AM on September 29, 1978.
- 3. Insubordination in that you refused three direct orders to return to duty; from E.T. Daley, Field Equipment Engineer, at 8:30 AM, September 28, and

E.E. Waggoner, Equipment Engineer, at 3:45 PM
and 4:10 PM, 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 MW Repair Shop where he was regularly assigned as a Repairman Helper on schedule of 7:00 AM to 3:30 PM.

2. Claimant's explanation for not working on September 28 was that when he got to the main entrance roadway of the Shop at his usual time, he saw "a bunch of guys milling around, talking about not going in to work that morning. I didn't want to say I'm going to go ahead, because you never know." He states that he was also told by

individuals there that there was a strike in progress. He further states that he saw no strike signs and that he was afraid that if he reported for duty of "somebody trying to beat me up or hurt my wife, my kids, or do damage to my property." He was unable to name any of those present, estimated by him to be approximately 100, or which of them directed him not to go to work.

As for September 29, he again appeared ready to go to work and again encountered a large group of strikers at the entrance to the Shop roadway, but not as many as on the previous morning.

Claimant further stated that he stayed with the congregated group on September 28 at the Shop entrance from about 6:30 AM to about 4:00 PM, but stayed "across the street." He gave as his purpose for remaining on that site for so long a period to "see if we were going back to work." On September 29 he stayed with the assemblage about 5 hours.

3. Field Equipment Engineer E.T. Daley testified that he saw Claimant among the strikers and picketers at the Broadway Road entrance to the Shop at about 8:30 AM on September 28. He told the group, including Claimant, that they were on an illegal strike and that they should either come to work or "vacate the premises." He was unable to say specifically at the trial that these individuals were on Company property, but stated that "they were close."

4. Assistant Cost Analyst J. Blaser testified that at about 8:30 AM he observed six to eight strikers stationed at the Broadway Road entrance to the Canton Shop, among them Claimant, and heard Mr. Daley order the group, including Claimant, to return to duty.

5. Equipment Engineer E.E. Waggoner testified that at approximately 3:45 PM and at approximately 4:10 PM on September 28 he saw Claimant among a group of picketers at the Broadway entrance to the Canton MW Shop where a strike sign was fastened to an electric pole.

6. Equipment Engineer R.E. Gray testified to the same general effect as Mr. Waggoner, adding that the autos of those in the group were blocking access to the Broadway Road, one of them belonging to Claimant. But they moved them when asked to do so by a law officer. He further stated that where the group was congregated, there was a large strike sign attached to the side of a pick-up truck. He further testified that at 4:10 PM he heard Mr. Waggoner tell the group, Claimant among them, that this was an illegal strike and that they should return to work or could be subject to discipline. None obeyed.

We find Carrier acted within its entitled and justifiable authority and on a convincing showing of guilt in respect to the

charges made in imposing the disciplinary dismissal on Claimant for the circumstances and activities revealed.

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.

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FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE