

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

vs.

CONSOLIDATED RAIL CORPORATION

Docket No. 433

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, reduced to 30 days suspension, on MW Repairman G.A. Gillilan.
- b) Claimant Gillilan's record be cleared of the charge brought against him on October 13, 1978, and he be compensated for wage loss sustained in accordance with the provisions of Rule 6-A-1(d).

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 and 3:45 PM on September 28, 1978 and at 8:00 AM and 4:05 PM and 5:15 PM on September 29, 1978.
3. Insubordination in that you refused two direct orders to return to duty from F. Bucceri, Shop

Engineer at 8:30 AM on September 28, 1978
and from R. Campitella, Shop Engineer, at
3:45 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 did not report for work on September 28 and 29, 1978 at the Canton MW Shop where he was regularly scheduled as a 7:00 AM to 3:30 PM MW Machinist.

2. Claimant's explanation of his failure to perform his assignments on those days, as given in his trial testimony, was that he "couldn't work" because there was a strike. He "guessed" this by the fact that there was a strike sign up and "about everybody that works there" was gathered at the entrance. He thereafter "stuck

around to see what was happening", staying there about an hour to an hour and a half. He further stated that he did not want to cross the picket line because it was "hard to tell what would happen. I didn't want to get beat up or something."

3. He had the same experience on September 29, again staying around the gathering outside the entrance for about one and one-half hours. He acknowledges that he came back at about 3:30 PM on both days, "to see what was going on; if we were going back to work."

He further acknowledges that at approximately 8:30 AM on September 28, 1978, he was one of those in a group to whom management representative Bucceri issued an order to go back to work and he heard that statement. He admits, also, that he heard such an order again from Shop Engineer Campitella addressed to a group of which he was a part at 3:45 PM on September 28, 1978. He further acknowledged that he did not obey either of these orders that day or the next.

4. Shop Engineer R. Campitella testified that on September 28, at about 3:45 PM, he saw a group of about fifty men gathered about the main entrance to the MW Shop at a strike sign stuck up in the middle of the entrance road; among them was Claimant.

He further testified that he saw Claimant at the same location at 4:05PM and at 5:15 PM on September 29.


According to Mr. Campitella, when he saw Claimant at 3:45 PM on September 28, the latter followed him around closely, "staring at me as if to intimidate me to keep me from writing names down and doing my duty", with his hand raised towards him. Also at this time, Campitella issued a direct order to the group, including Claimant, to report to duty; and if they did not, disciplinary action would be taken. None returned to work. Standing near Campitella when the order was issued was Assistant Equipment Manager L. DuBois.

5. Mr. DuBois testified in essential corroboration of the foregoing.

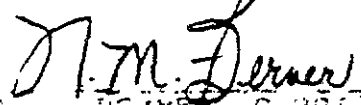
The Board concludes that Carrier acted on a valid evidentiary basis and within disciplinary standards properly open to it for such circumstances when it resorted to imposition of the subject discharge penalty.

A W A R D

Claim denied.


LOUIS YAGODA, CHAIRMAN & NEUTRAL


FRED WHIGZEL, JR., ORGANIZATION MEMBER


M.M. DERNER, CORPUS MEMBER

DATE

December 5, 1979.