

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

vs.

CONSOLIDATED RAIL CORPORATION

Docket No. 437

STATEMENT OF CLAIM:

- a) The Carrier violated the Rules Agreement, effective December 16, 1945, as amended, particularly Rules 5-A-1, 5-C-1 and the Absenteeism Agreement of January 26, 1973, when it assessed discipline of dismissal on MW Repairman Helper Jeffrey P. Wolf, November 22, 1978.
- b) Claimant Wolf's record be cleared of the charges brought against him on October 12, 1978.
- c) Claimant Wolf 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 7:00AM, September 28 and 29, 1978.
- 2. Engaging, abetting and participating in an unauthorized work stoppage at Canton MW Shop at Main entrance Division Road, Canton, Ohio, at 8:30AM on September 28, 1978, and at Webb Street entrance - Alliance Yard at 8:30AM 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 you were blocking entrance at Webb Street Entrance, Alliance Yard, by picketing, on September 29, 1978 at 8:30AM.
4. Insubordination in that you refused a direct order to return to duty from Frank Bucceri, 1st Trick Shop Engineer, at 8:30AM 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 report for duty at his regular place of employment at the Canton Maintenance of Way Shop on September 28 and 29, 1978, where he was employed as a Repairman Helper with a tour of duty from 7:00AM to 3:30PM.

2. Shop Engineer F. Bucceri testified at trial that on September 28, 1978, at approximately 8:30AM, he observed 40 to 50 individuals gathered about the main entrance to the Canton Shop, Claimant among them, and he informed the group, including Claimant, that they should come into work because the strike in which they were participating was an unauthorized one.

3. Assistant Equipment Engineer R.P. Muir testified that on September 29, 1978, he observed Claimant at 8:30AM standing by a fire at the Webb Street entrance to Carrier's Alliance Yard, about 17 miles away from Canton.

4. Assistant Cost Analyst J. Blaser testified that he was also standing near the Webb Street entrance to the Alliance Yard at about the same time, with the same mission as Mr. Muir - to take the names of strikers assembled there. He saw two individuals stationed there, one of them the Claimant. He asked Claimant for his name; Claimant did not answer but turned away. Mr. Blaser observed a strike sign displayed where these men were standing.

5. H. Reedy testified that he was standing with Messrs. Bucceri and Muir at the main entrance to the Canton Shop on September 28, 1978, when he saw Claimant among a large group of others congregated there, and he witnessed Mr. Bucceri giving the group present, including Claimant, a "direct order to come back to work."

6. Claimant's testimony is as follows:

a) When he came to work on September 28, he "saw that there were men standing out there, a lot of them." He went down to a telephone booth and phoned the plant. He was told by the one who answered (not identified by name by Claimant) to go back and stand on the hill and wait until someone came out to break it up. He did so. However, the group was not "broken up", so he did not go in to work. He saw no one come out of the Shop that morning, although "he heard that" Mr. Bucceri had come out of the Shop. He did not hear Bucceri make any statement.

b) Claimant was at the Webb Street entrance to the Alliance Yard at approximately 8:30AM on September 29, 1978, but he was there for only about 5 minutes. He had come there because he had friends in Alliance. After seeing his friends, while on the way back to Canton, he was "curious to see" if anything was going on at the Alliance Shop. He stated that his residence is at Massillon (about 25 miles east of Alliance).


We conclude that Carrier had valid and sufficient grounds for finding Claimant guilty of the charges made against him in kind and degree justifying the 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 December 5, 1979