

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CONSOLIDATED RAIL CORPORATION

DOCKET NO. 411

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 of MW Repairman John T. Sours, November 22, 1978.
- (b) Claimant Sours' record be cleared of the charge brought against him on October 13, 1978.
- (c) Claimant Sours 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 September 29, 1978.
2. Engaging, abetting and participating in an unauthorized work stoppage at Canton, MW Shop at Main Entrance - Division Road 10:00 AM, September 28, 1978 and at Webb St. Entrance, Alliance Yard, Alliance, Ohio at 8:30 AM - 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 picketing the Webb St. Entrance - Alliance Yard, Alliance, Ohio at 8:30 AM on September 29, 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 opinions 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. Claimant acknowledged that he absented himself from his regularly scheduled work at the Canton Shop on September 28 and 29, 1978.
2. Witnesses testified that, at approximately 10:00 AM on September 28th, Claimant was one of a large group of picketers and strikers accompanied by a strike sign at the main gate of the entrance

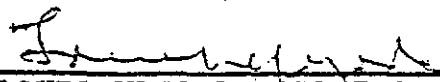
to the Canton Maintenance of Way Shop. Claimant took no exception to this, stating as his reason for joining the strikers and picketers " ... because there was a bunch of people milling around with picket signs ..." and "I have a son to support; and didn't want to cross the picket line".

3. Further testimony was given that Claimant was also seen with three other picketers and strikers at approximately 8:30 A.M. on September 29, 1978 at an entrance to Alliance Yard, another Carrier facility, 17 miles away from Claimant's regular work site with a strike sign displayed nearby. Claimant did not deny his presence in this group, stating that he went to Alliance "to see if there was any trouble going on ... just fighting and stuff like that".

We conclude that the charges have been upheld in kind and degree entitling Carrier to impose the dismissal penalty therefor.

A W A R D

Claim denied.

  
LOUIS YAGODA, CHAIRMAN & NEUTRAL

  
FRED WURPEL, JR., ORGANIZATION MEMBER

  
N.M. BERNER, CARRIER MEMBER

DATED

September 5, 1979