

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CONSOLIDATED RAIL CORPORATION

DOCKET NO. 441

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-D-1, 5-E-1 and 6-A-1, when it assessed discipline of dismissal on Chauffeur A. C. Forehope on November 22, 1978.
- b. Claimant Forehope's record be cleared of the charge brought against him on October 13, 1978.
- c. Claimant Forehope 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 subsequently disciplined by discharge for the following charge:

1. Engaging, abetting and participating in an unauthorized work stoppage at Canton MW Shop at 11:00 PM on September 28, 1978 and at 4:05 PM 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 350 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 stated 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. Claimant was assigned as a Track Department Truck Driver, tour of duty 7:00 AM to 3:30 PM, reporting at Salinesville, Ohio, about 38 miles from Canton, at the time of the occurrences leading to the subject discipline.

2. Shop Engineer R. Campitella testified that on September 28, 1978 at approximately 11:00 PM, he saw Claimant standing in a gathering of picketers and strikers at the main entrance road to the Canton Repair Shop where there was a strike sign on display. He further testified that he also saw Claimant on September 29, 1978 at the same site at about 4:05 PM, again with a group having a strike sign displayed at their location.

3. Assistant Equipment Engineer L. DuBois testified that he too saw Claimant on September 29, 1978 at approximately 4:05 PM,

getting out of a van and then proceeding to the group of pickets and strikers gathered at the main entrance road to the Canton Shop who were standing by a strike sign and a small fire.

4. In his own testimony, Claimant stated:

(a) He reported to and for his usual work at Salinesville on September 28th, but marked off from duty at about 10:30 or 11:00 AM because the employee who usually furnished him with a ride was sick and therefore he asked and got permission from supervision to leave in the morning.

(b) He was unaware that there was an unauthorized work stoppage at Canton on that date. However, he visited the general area to go to a bar near where the picketing was taking place and en route went over to the gathering to find out what was going on. He surmises that this is when he was observed and regarded as being one of the picketers (at about 11:00 PM).


(c) As to September 29, 1978, Claimant observed his usual work scheduled but admits that on one of his stops at Carrier's Alliance facility, "there was a sign up and I did not go past the sign in Alliance to pick up parts."

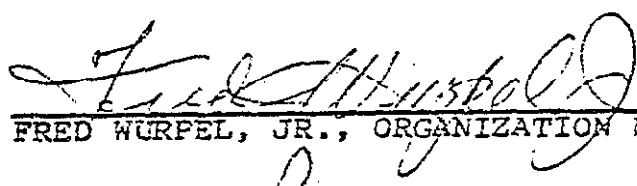
(d) Claimant admits that on the same date, at 4:05 PM, he visited the picketers at Canton but did not participate in any picketing or other strike activity.

It is the opinion of the Board that the trial record shows the participation and activity of Claimant in the illegal and unauthorized strike to have been of such kind and degree as not to justify the dismissal penalty imposed, but that a more appropriate disciplinary reaction would be a suspension without pay for the period since his termination.

A W A R D

Claimant shall be restored to his former position within thirty (30) days without compensation for lost wages.


LOUIS YAGODA, CHAIRMAN & NEUTRAL


FRED WURFEL, JR., ORGANIZATION MEMBER


N.M. BERNER, CARRIER MEMBER

DATED

August 30, 1979