

PUBLIC LAW BOARD NO. 2420

AWARD NO. 34

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

VS.

CONSOLIDATED RAIL CORPORATION

DOCKET NO. 442

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 M.W. Repairman Jesse B. Johnston, November 22, 1978.
- (b) Claimant Johnston's record be cleared of the charge brought against him on October 13, 1978.
- (c) Claimant Johnston 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(c), 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, 1978, and September 29, 1978.
- 2 - Engaging, abetting and participating in an unauthorized work stoppage at Canton MW Shop at 8:30 AM, 3:45 PM on September 28, 1978, also at 8:00 AM on September 29, 1978.d
- 3 - Influencing fellow employees to illegally picket the Company's property and/or not to perform their assigned duties in that your car was blocking entrance to Broadway Road at 11:30 AM, September 29, 1978.

"4 - Insubordination in that you refused a direct order to return to duty from Frank Bucceri, Shop Engineer at 8:30 AM, 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 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. It is undisputed that Claimant did not appear for or performed work on September 28 and 29, 1978 at the Carrier's Canton M.W. Repair Shop where he was regularly employed as an M.W. Repairman with a 7:00 A.M. to 3:30 P.M. tour of duty.

2. Claimant's testimony in explanation of these absences is that he came to work by his auto so as to be at his workplace at the usual starting time. When he arrived at the Mahoning Road-Division Road entrance (main entrance to the plant property), he encountered a "mob of people in front of the road" in an apparent strike and "just wasn't going to take the chance of getting my head beat in" by going through the gathering into the Shop. He saw a strike sign on display

among the pickets. He states that he did not attempt entrance and was not physically impeded from entrance by anyone in the group.

Claimant further states that he remained at the site of the congregated strikers for "probably a couple of hours anyway" to find out "if we were going to work or not." He attempted to phone the plant on both mornings, but the line was busy and he gave up trying.

He further acknowledges that he was at and among the picketers between approximately 3:45 P.M. and 4:10 P.M. on September 28, 1978, because he thought "possibly the second shift might go to work" and, if so, he would be prepared for coming in to work the next morning. He was able to determine that nobody on the second shift or the Shop apparently went to work. He further acknowledged that within that time span, he was also at the Broadway Road entrance to the Shop where strikers were stationed, because (a) he was "driving by" to see his sister who works at T & C Credit nearby and (b) to see if the afternoon shift had come back to work.

Claimant further admitted that, on September 28, 1978, he also appeared at the Broadway Road entrance to the Shop property at about 8:30 A.M. where he was among a group to whom Shop Engineer F. Bucceri issued an order to return to work. He explained his presence at the latter entrance as an attempt to see if he could get into the Shop via that road, but found that he could not.

In respect to the contention that a second order was given to him to return to work when he was part of a group addressed by E. E. Waggoner at between 3:45 P.M. and 4:10 P.M. on September 28, 1978,

Claimant responded:

"No. Mr. Waggoner, all he did is -- I thought that possibly we would go back...He asked me, he says do you know that this is an unauthorized work stoppage? There was a couple other fellows there and they all says, yes, that they knew apparently. And that was it. That's all he asked. Then he drove off."

Claimant also estimated that the congregated strikers on the morning of September 28, 1978, amounted to "180, maybe 200" and the entrance road was blocked by their cars, but said that he was just an "innocent bystander." He later amended the statement, by saying that there was room left on the roadway for cars to go in and out, utilized by several cars of Carrier officials as well as a truck.

He also said that his reason for not going in on either day was because he did not want to take the chance of being beaten.

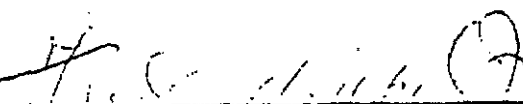
3. Testimony given by Carrier witnesses generally conformed to those of Claimant's own admissions in significant respects. They do, however, add various details of apparent sound credibility which make stronger a case against Claimant as having been affirmatively active as a picketer, in spite of clear notice and knowledge that in doing so he was implementing and augmenting an unauthorized and illegal strike and, as such, was subject to discipline.

For these reasons, we find Carrier justified in finding Claimant guilty in kind and degree of the charges on which tried so as to warrant imposition on him of the subject discharge penalty.

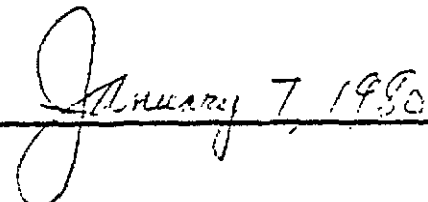
A W A R D

Claim denied.

  
LOUIS YAGODA, CHAIRMAN & NEUTRAL

  
FRED WURPEL, JR. ORGANIZATION MEMBER

  
N.M. BERNER, CARRIER MEMBER

DATED  January 7, 1950