

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CONSOLIDATED RAIL CORPORATION

DOCKET NO. 414

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 Ronald W. McCracken, November 22, 1978.
- b. Claimant McCracken's record be cleared of the charge brought against him on October 13, 1978.
- c. Claimant McCracken 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, September 28 and September 29, 1978.
2. Engaging, abetting and participating in an unauthorized work stoppage at Canton MW Shop at 8:30 AM, September 28, 1978 and 8:30 AM, September 29, 1978; Mahoning St. Ent. Alliance Yard.

3. Influencing fellow employees to illegally picket the Company's property and/or not to perform their assigned duties in that you were picketing at Mahoning St. Entrance, Alliance Yard, Alliance, Ohio at 8:30 AM on 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 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 opinions on certain procedural and substantive questions raised by Organization there and here.

Turning to the particular facts of the instant situation, the record shows:

1. Claimant, along with other strikers, abstained from entering the plant or carrying on his regular scheduled work there on September 28 and 29, 1978.

2. Testimony established and Claimant acknowledged that

although his daily hours were scheduled to begin at 7:00 AM on September 28, 1978, he was one of a group of strikers and picketers at approximately 8:30 AM at the main entrance to the shop on Company property.

3. Testimony also established that at that time and place, Claimant was among those to whom Shop Engineer F. Bucceri stated, pursuant to instructions given him, that the individuals there gathered were engaged in an unauthorized strike, they were directed to go back to work and that they were subject to disciplinary action if they did not. Claimant did not return to work.

4. Claimant gave as his reason for not reporting for work on the two days that "there was a picket line and signs set up", but acknowledges that he did not report to or phone in any explanation to supervision.

5. Testimony, including that of Claimant, established that on September 29, 1978, at approximately 8:30 AM, Claimant was present among strikers and picketers at an entrance to Carrier's Alliance Yard, about 17 miles away from the Canton shop. He was standing adjacent to an automobile on whose windshield there was displayed an "On Strike" sign.

6. Claimant explained his presence at that time and place

as due to his having stopped by there en route to his home, but admitted that it was not a direct route to his residence. Claimant denies that he was on actual Company property on either of the two dates, but adjacent to entrances of these facilities.


We find that the charges have been sustained in degree and kind entitling Carrier to have imposed the discharge penalty.

A W A R D

Claim denied.


LOUIS YAGODA, CHAIRMAN & NEUTRAL


FRED WURPEL, JR., ORGANIZATION MEMBER


N.M. BERNER, CARRIER MEMBER

DATED

August 30, 1979