PUBLIC LAW BOARD NO. 2420

AWARD NO. 7

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CONSOLIDATED RAIL CORPORATION

DOCKET NO. 405

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, 6-A-1 and the Absenteeism Agreement of January 26, 1973, when it assessed discipline of dismissal on M.W. Repairman T.L. Martin, December 4, 1978.

(b) Claimant Martin's record be cleared of the charges brought against him on October 13, 1978.

(c) Claimant Martin 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 29, 1978.

"2; Engaging, abetting and participating in an unauthorized work stoppage at Canton MW Shop at 8:30 AM, 3:45 PM, and 4:10 PM on September 28, 1978 and at 4:05 PM on September 29, 1978.

"3; Insubordination in that you refused Three direct orders to return to duty; from F. Bucceri, Shop Engineer at

8:30 AM on September 28, 1978 from R. Campitella, Shop Engineer at 3:45 PM on September 28, 1978 and at 4:10 PM on September 28, 1978.

"4: Threatening R. Campitella, Shop Engineer, with bodily harm at the Main entrance to Division Road at 4:10 PM on September 28, 1978.

"5: Assaulting and attempting to intimidate R. Campitella, Shop Engineer, in the performance of his duties at the main entrance to Division Road at 4:10 PM 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 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 testified that he proceeded to go to and enter the roadway access to the Canton Shop on September 28, 1978 in order to assume his regular duties on the 7:00 AM to 3:30 PM shift. However, when he arrived at the main entrance, he found that there was a "disturbance on the hill --- a group of people up there, and there was a sign stating that they were on strike in sympathy of N and W". Claimant's further testimony is that he went home about 8:30 AM and was at home "most of the day", later going to a tavern near the Shop about 3:00 or 3:15 PM.

2. Testimony was given by Shop Engineer Bucceri that on September 28, 1978 at approximately 8:30 AM he witnessed forty to fifty strikers and picketers at the main entrance of the Shop, Claimant among them. His further testimony is that he issued an order to these individuals to return to work. None obeyed.

Claimant stated at the hearing that he neither saw nor heard Mr. Bucceri at that time.

3. Assistant Equipment Engineer R.P. Muir testified that he too was at the main entrance site about 8:30 AM on September 28, 1978, together with Mr. Bucceri and Mr. Reedy, and heard Mr. Bucceri make the statement to the group, including Claimant, testified to by Mr. Bucceri. He described Claimant as having been positioned "in with the group".

4. Shop Engineer R. Campitella testified that at 3:45 PM on September 28, 1978 he was at the main entrance to the MW Shop at Canton where he read an order to a group of strikers and picketers congregated there that they were directed to report for duty; if they did not, disciplinary action would be taken. Mr. Campitella identified Claimant as one of the group. The orders read by Campitella were not obeyed.

Mr. Campitella's further testimony is that at 4:10 PM he returned to the same site and again saw Claimant Martin in the picketing group. He then proceeded to write down the names of those present. His testimony goes on to state that Claimant came up to him, expressed objection to Campitella's taking down the names, then "bumped" him with his left shoulder against Campitella's right side three or four times, causing the latter to move away

in order to avoid further assaultive impact from Claimant. The latter then followed Campitella and addressed a series of extremely rude obscenities to him while telling him that "it would be better for him to go back to the Shop". According to Mr. Campitella, Claimant thereafter kept summoning him back with a hand motion while stating: "Come on. Come on back here. We will settle this right now". He further quotes Claimant as telling him, "I know where you live. I have been past your place. We will get you for this".

5. The foregoing testimony of Mr. Campitella was essentially corroborated by Assistant Equipment Engineer L. Dubois who testified that he was present and witnessed these occurrences and statements while assisting Campitella in writing down the names.

6. In his testimony, Claimant denied cursing or bumping Campitella or threatening him.

7. Testimony was given by S.A. Risaliti, a Canton Shop employee, striker and officer of Local 3050 at the time, that he was present at the place and time referred to by Messrs. Campitella and Dubois and did not witness Campitella "threatened, assaulted or intimidated at that time" by Martin.

As described by Risaliti, Messrs. Campitella and Dubois approached the group and started writing down the names of those present there. They were thereupon approached by Claimant and Risaliti who asked Campitella "what he was doing there" off Company property. They then had "another few words "with each other and Claimant "got a little hot" with Campitella but did not threaten him with bodily harm. Claimant did not touch Campitella. Mr. Risaliti

further states that he, himself, ordered Mr. Campitellato "please leave city property" to stop "intimidating" the men.

8. Gene Koah, a welder in the Canton Shop and a striker on September 28 and 29, 1978, testified that he was among those standing at the Division Road entrance at about 4:10 PM and did not see Claimant attack, threaten or attempt to intimidate Mr. Campitella.

9. Claimant testified that he did not appear at his work-place at his scheduled starting time on September 29, 1978 because "there was a disturbance on the hill ... a group of people up there and there was a sign stating that they were 'On strike in sympathy of N & W.'"

He acknowledged that he had had a conversation with Mr. Campitella at 4:10 PM on September 28, but stated that he never raised his voice during that conversation or threatened him or made any physical contact with him.

He further stated that he did not go in to work because "I just didn't want to jeopardize my job and my family to go through any picket line".

The Board concludes that Carrier acted on substantial and valid grounds of proof and legitimate managerial disciplinary standards in finding the Claimant guilty in degree and kind justifying the imposition of 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 September 5 1979