

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CONSOLIDATED RAIL CORPORATION

DOCKET NO. 416

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 Larry L. Crites, November 22, 1978.
- (b) Claimant Crites record be cleared of the charge brought against him on October 13, 1978.
- (c) Claimant Crites 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 3:30 PM on September 28, 1978, and September 29, 1978.
- *2 - Engaging, abetting and participating in an unauthorized work stoppage at Canton MW Shop at 3:45 PM, September 28, 1979 and 8:30 AM on September 29, 1978, at Alliance Webb St. Entrance.
- *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 the Webb St. entrance at Alliance, Yard - Alliance, Ohio at 6:30 AM on September 29, 1978.

"4- Insubordination in that you refused a direct order to return to duty from E.E. Waggoner, Shop Engineer at 1:45 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 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 was established at on-the-property trial that Claimant failed to report for regularly scheduled duty on September 28 and September 29, 1978.

2. It was also shown that on September 28, 1978, Claimant (with regular reporting time of 3:30 PM) was present at the main plant entrance at about 3:45 PM, as one of a group of strikers and picketers who were patrolling the area in the presence of an "On Strike" sign placed on display near them, Claimant acknowledged his presence in this congregation at the time and place stated but stated that he did not enter the plant for work because "the men was outside. I wasn't sure about my safety and about being safe to work". He refused to answer the

question: "On what basis did you fear for your safety?" He further stated that he left for home between 4:00 and 5:00 PM. He also admitted that he again spent time in the area later in the day.

When seen at the plant's main entrance, the group congregated there, including Claimant, was addressed by Shop Engineer R. Campitella ordering them back to work. None complied.

4. At about 8:30 AM, September 29, 1978, Claimant was seen standing in the company of others at a crossing going into the Webb Street entrance of a related locality, the Alliance shop about 17 miles away from the Canton shop. Near these individuals was displayed an "On Strike" sign. When asked at hearing what was his purpose in being at the Alliance shop entrance, Claimant responded, "No particular purpose" but later added that his "main reason" for being in Alliance was that he had driven his wife there in his truck to do shopping. He admitted his presence at the plant entrance, but denied that he was "picketing". He also admitted that his wife was not shopping in the area of the plant entrance but he was there because he "was just more curious than anything else".

On the basis of the entire record, we conclude that Carrier was justified in regarding the Claimant guilty of the charges on which he was tried and further find that the imposition of the discharge penalty was a disciplinary recourse open to Carrier for the nature and degree of offence involved.

