PUBLIC LAW BOARD NO. 2420

AWARD NO. 9

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CONSOLIDATED RAIL CORPORATION

DOCKET NO. 417

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 Soldo, November 22, 1978.

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

(c) Claimant Soldo 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, 4:10 PM, and 11:00 PM on September 28, 1978 and at 2:00 AM, and 10:00 PM on September 29, 1978.

"3; Influencing fellow employees to illegally picket the Company's property and/or not to perform their assigned duties in that you attempted a work stoppage at Bayard Tower on the morning of September 29, 1978.

"4; Insubordination in that you refused Two direct orders

to return to duty; from F. Bucceri, Shop Engineer at 8:30 AM on September 28, 1978; and from R. Campitella, Shop Engineer 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 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 did not report for or appear at his scheduled work at the Canton Maintenance Shop (where he was part of the first trick personnel) on September 28 and 29, 1978.

2. On September 28, 1978 he was seen at about 8:30 AM among a group of strikers and picketers assembled at the main entrance to the Canton Repair Shop, a sign displayed among them to the effect that the shop was on strike, and by their movements at various times blocking access into the entrance road.

3. About that time on that date, at that place, Claimant was part of a strike group which was ordered by Shop Engineer Bucceri, pursuant to management instructions, to go back to work. None complied.

4. On the same day, Claimant was again seen among the strikers and picketers at 4:10 PM, the group blocking the road affording entrance into the plant grounds and shop. A strike sign was displayed at the site, attached to a utility pole.

5. At about the same time, Claimant was seen "continually walking around" pushing and shoving Shop Engineer Campitella who had been sent by management to the picket line, raising and lowering his body on Campitella's arms, shoving and crowding him by use of his shoulders, arms, knees and buttocks, and, at one point, striking him hard in the chest with his shoulders; during this time, Campitella was attempting to make notes, pursuant to management's instructions to him.

6. At about 11:00 PM on the same date, Claimant was again part of a group of strikers and picketers at the main entrance. At that time, Mr. Campitella was again there attempting to take notes. Claimant again pushed, shoved and crowded Campitella by use of his shoulders, arms, knees and buttocks, at one point attempting to grab the paper from Campitella's pad, and finally spitting at Campitella's shoes.

7. Claimant was again observed at 2:00 AM on September 29, 1978 at the main entrance and at 10:00 PM at the Broadway entrance to the shop, at which time he was handed a notice of a court order restraining further strike activity.

8. Claimant stated at hearing that the only reason he was at the various places was for the purpose of finding out what was going on. He did not go to work on the two days because he was afraid of physical injury to himself if he did. He also denied entirely the testimony to the effect that he had physically molested Mr. Campitella. He recalled that Mr. Bucceri had ordered him, among others, back to work but could not "remember the exact wording of the order".

9. In support of Claimant's version of the events in question, Organization presented four witnesses who testified they were nearby at the times when Claimant is alleged to have buffetted and molested Mr. Campitella. They stated that Claimant had made no physical contact with Campitella. One of them stated that he told Mr. Campitella that he should not be among the picketers because his taking notes was "intimidating" them and "there could be trouble". He further stated that the picketers "got a little boisterous ... or a little bit loud" with Campitella and "there were a few other people that had a few drinks from the surrounding bars" and were making "hostile and disapproving" statements against Campitella and he (the witness) "was sort of concerned about Mr. Campitella's well-being" and asked him to leave the area because "there could be some trouble here and some of the men resented him being up there". The witness went on to state that he then "heard a few loud gestures, you know, this sort of like get the hell back over the hill where you belong, stuff like that; a few other words". But, according to the witness, Claimant was merely doing the "same thing everybody else was doing, standing around talking".

All of the witnesses who testified for Claimant were individuals who had also been found guilty of having been involved in the unauthorized work stoppage.

From our examination and evaluation of the evidence presented by the parties, we conclude that Carrier acted on impressive evidence in finding Claimant guilty of the charges on which he was tried and in degree and kind justifying the resulting discharge penalty imposed on him.

A W A R D

Claim denied.

LOUIS YAGODA, CHAIRMAN & NEUTRAL

FRED WURPEL, JR., ORGANIZATION MEMBER

N.M. BERNER, CARRIER MEMBER

DATED October 5 1979