PUBLIC LAW BOARD NO. 2420

AWARD NO. 12

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CONSOLIDATED RAIL CORPORATION

DOCKET NO. 420

STATEMENT OF CLAIM:

1. The dismissal of Claimant Lowell G. Iden was unfair, arbitrary, capricious, unreasonable and without just and sufficient cause.

2. Claimant Iden should be exonerated of all charges, restored to service, without loss of compensation, with seniority and vacation rights unimpaired, and should enjoy all those benefits which he previously enjoyed prior to his dismissal.

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, and 29, 1978.

2. Engaging, abetting and participating in an unauthorized work stoppage at Canton MW Shop at 3:45 PM, 5:45 PM and 11:20 PM on September 28, 1978.

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 Service Packaging Entrance at 5:45 PM, on September 28, 1978.

4. Insubordination in that you refused a direct order to return to duty from R. Campitella, Shop Engineer at 3:45 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 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, a regular second trick employee of the Canton Maintenance of Way Shop, did not enter the Shop or carry on his regular work on September 28 and 29, 1978.

2. Shop Engineer Campitella testified that on September 28, 1978 at about 3:45 P.M. he observed Claimant joining with others in "milling around" at the Broadway Road entrance to the Shop at a place where there was an "On Strike" sign on display.

3. Mr. Campitella's further testimony is that he informed the group, of which Claimant was a member, that the Shop was open and they should come to their place of employment, that if they did not, disciplinary action would be taken. None of the members of the group complied with this instruction, including Claimant.

4. Assistant Equipment Engineer R. E. Gray testified that he observed Claimant among the picketers and strikers on September 28, 1978 at 11:20 P.M. at the so-called Service Packaging Entrance to the Shop, at a point near where there was displayed a strike sign

on the back end of a pickup truck.

5. The testimony of Gray is supported by testimony to the same effect by Equipment Engineer E. E. Waggoner.

6. Trainmaster K. Barkhurst testified that he and Assistant Division Superintendent Guveiyian observed Claimant standing with another at the Service Packaging Entrance to the Shop at a pickup truck with a strike sign on it, at about 5:45 P.M. on September 28, 1978.

7. Mr. Guveiyian testified to the same general effect and also stated that he asked these two individuals whether or not they were going to permit employees (belonging to another work group and organization) to enter the property to receive their paychecks and that Claimant informed him that they would not prevent said individuals from going on the property to get their paychecks.

8. In his own testimony, Claimant admitted that on September 28, 1978 he was at the Division Road entrance to the Canton Shop from about 3:20 P.M. to about 4:00 P.M. He explained that he had come to work prepared to assume his duties but saw that "98%" of his co-workers were congregated at this gate and "milling around" either "trying to come to work or hoping that the pickets would come down so that we could go to work." He further admitted that he was also present at picketing congregations at approximately 5:45 P.M. and 11:20 P.M. that day at points contiguous to Shop grounds, but denied that he was picketing. His explanation is that "Everybody was in chaos, and they were saying that we need people here, we need people there; and two guys from N & W the employees with whom the strike

was in sympathy said that things could happen if we didn't help participate." He denied, however, that he "influenced" others to picket.

9. As for Mr. Campitella's alleged order to him and the rest of the group, Claimant stated: "I would not call it an order."

10. In respect to his not working on September 29th, Claimant stated that he again encountered the pickets that morning. He then went halfway home and called in and reported that the pickets were still up and he could not come in, inasmuch as he "feared for my life."

We conclude that, although not shown to be an active participant in the picketing on the second day of the strike, Claimant's active, roving involvement on the first day and his having been one of those who was instructed to terminate this unauthorized strike and failed to return to work constitute a showing of guilt on the charges in degree and kind as to justify the imposition of a disciplinary suspension for the long period since Claimant's discharge, rather than the termination penalty administered.

A W A R D

Claimant shall be reinstated to his former position within thirty (30) days without restitution for earnings lost.

LOUIS YAGODA, CHAIRMAN & NEUTRAL

FRED WURPEL, JR., ORGANIZATION MEMBER

N.M. BERNER, CARRIER MEMBER

DATED December 2, 1979.