

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CONSOLIDATED RAIL CORPORATION

DOCKET NO. 421

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 MW Repairman B. J. Justice, November 22, 1978.

b. Claimant Justice 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 dismissal 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 2:00 AM on September 29, 1978 and at 8:30 AM 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 were picketing Webb St. Entrance to Alliance Yard, Alliance, Ohio at 8:30 AM on September 29, 1978.

The instant claim arises out of a disciplinary termination 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 our opinion 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. It is not disputed that Claimant failed to appear for and perform his scheduled work as a first trick MW Repairman at the Canton Maintenance of Way Shop on September 28 and 29, 1978.
2. Testimony was given by Equipment Engineer Reeder and Equipment Engineer Baker that at approximately 2:00 AM on September 29, 1978, he observed Claimant and another man at the Service Packaging entrance to the plant at a small fire.
3. Assistant Equipment Engineer Muir and Cost Analyst Blaser testified that at 8:30 AM on the same date they observed Claimant with others at the Webb Street entrance to Carrier's Alliance Yard, about 17 miles from Canton.

4. Claimant testified that on both September 28 and 29, 1978, he intended to report for work but when he got to his usual place of entry, "There was people standing around. I figured it was unsafe. I didn't want any part of it."

He explained his presence on September 29, 1978 at the Service Packaging entrance as, "I was driving by, and I saw this guy up there; so I asked him if the work stoppage was going to be on." He stated that he was there probably about ten minutes and did no "picket duty."

As to his having been at the Webb Street entrance to the Alliance Yard, he "was driving by" and "stopped to talk for a second", estimating again that he might have been there for ten minutes. He admitted that he lived in Canton but got to Alliance on a ride with another individual who was going to take his wife shopping at Alliance, and "we just drove by to see what was going on." His estimate was, again, that he had been there for about ten minutes.

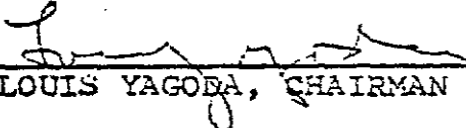
We conclude that Carrier had material basis for concluding that Claimant was an active picketer and striker in this unauthorized and illegal strike by his appearance and participation at various picketing sites obviously placed at points for deterring employees from ingress to work. The pattern of these appearances justifies Carrier in not accepting the repeated excuses of appearances there

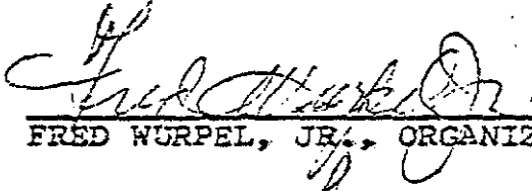
merely for the purpose of finding out what was going on, including a 17-mile trip to the Alliance picketing site.


For these reasons, we find that Carrier has established in degree and kind, justification for its disciplinary action on the charges in this matter.

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