

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

vs.

CONSOLIDATED RAIL CORPORATION

Docket No. 426

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 William J. Perkins, November 22, 1978.
- b) Claimant Perkins' record be cleared of the charge brought against him on October 12, 1978.
- c) Claimant Perkins 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 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 and 11:25 PM on September 28, 1978 and 2:00 AM on September 29, 1978.
- 3. Insubordination in that you refused a direct order to return to duty from R. Campitello, Shop Engineer-2nd Trick, 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 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:

I. As in similar circumstances described in previous Awards, Claimant and his representatives left the trial soon after the outset of the proceedings because trial officer ruled that only one of the two individuals designated by Claimant as his representatives at the trial (both District Chairmen) act as his spokesman and interrogator of witnesses. The trial then proceeded in the absence of Claimant or representation of him.

As in the previous such instances, we reject Organization's contention that these are grounds for declaring that Claimant was denied a fair and impartial hearing and that we should dismiss or deny the charges on those procedural grounds.

2. Testimony revealed that Claimant failed to appear for or perform his regularly scheduled work on the 3:30 PM to Midnight shift at the Canton Maintenance of Way Shop on September 28 and 29, 1978.

3. Testimony by Equipment Engineer E.E. Waggoner identified the van of Claimant as being present among picketers and strikers at the "YMCA entrance" to the Shop on September 28, 1978, at 11:20 PM, where strike signs were on display.

4. Assistant Equipment Engineer DuBois testified that on September 28, 1978, while accompanied by Shop Engineer R. Campitella, he saw Claimant at about 3:45 PM among a group of pickets at the main driveway to the Shop and heard Mr. Campitella tell this group that this was an unauthorized strike, that the doors were open and ready for work and that if the men did not report, drastic action would be taken. Neither Claimant nor the others present complied with the order.

5. This testimony was corroborated by Mr. Campitella.

6. Equipment Engineer H.M. Reader testified that he saw Claimant among a group performing picket duty at approximately 2:15 AM, September 29, 1978, at the YMCA entrance to the Shop.

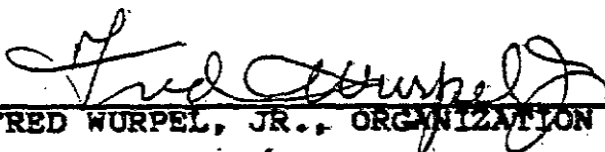
We conclude that Carrier was justified in deciding that

Claimant was guilty in degree and kind of the charges on which tried so as to warrant 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 December 5, 1979.

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