

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CONSOLIDATED RAIL CORPORATION

DOCKET NO. 427

STATEMENT OF CLAIM:

- (a) The Carrier violated the Rules Agreement, effective December 16, 1945, as amended, particularly by Rules 5-A-1, 5-C-1, 5-E-1 and the Absenteeism Agreement of January 26, 1973, when it assessed discipline of dismissal of M.W. Repairman David A. Sampsel November 22, 1978.
- (b) Claimant Sampsel's record be cleared of the charge brought against him on October 13, 1978.
- (c) Claimant Sampsel 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, 1978, and September 29, 1978.
- 2 - Engaging, abetting and participating in an unauthorized work stoppage at Canton MW Shop at 4:10 PM on September 28, 1978.
- 3 - Threatening R. Campitella, Shop Engineer, with bodily harm at the Main Entrance to Division Road at 4:10 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, whose regular tour of duty as a repairman was 3:30 PM to 12:00 Midnight at the Canton M.W. Shop, admittedly did not report for duty on either September 28 or 29, 1978 while an unauthorized and illegal strike and picketing situation was going on by members of Local 3050, B.M.W.E. at the Canton Shop.

2. Testimony was given by Shop Engineer R. Campitella that on September 28, 1978, he had been assigned by management to check entrances to the shop and record the names of employees who were congregated out there.

According to his further testimony, Mr. Campitella went to the main entrance of the shop to carry on this activity about 4:10 PM, when Claimant, one of the group gathered there, approached him, called him insulting names and used foul and abusive language towards him, pointed his finger at him and stated, "We know where you live and we will take care of you". As Campitella retreated down the hill, Claimant followed him continuing his tirade

and threats.

3. Assistant Equipment Engineer L. W. DuBois testified that he was present at the same site at the same time, accompanying Mr. Campitella. He corroborated Campitella's version of the incident, stating further that when he and Campitella reached the bottom of the hill, with Claimant still cursing Campitella with foul language, Claimant added to DuBois, "That goes for you too, Leo".

4. T. Martin, an M.W. Repairman at Canton, testified that on September 28, 1978 he was with Claimant in the Hide-A-Way Tavern, located near the shop entrance from about 1:00 PM to about 8:00 PM. Mr. Martin added, however, that he did see Mr. Campitella and Mr. DuBois at the Canton shop property entrance, but was not asked and did not specify the time.


5. Claimant testified that he came to work at his regular time for his 7:00 AM to 3:30 PM tour on September 28, 1978 but he "couldn't get through" and although "no one advised me personally to cross the picket line because I thought bodily harm would come to me if I did and I have a family; and that is why, mainly, I didn't cross. I don't cross picket lines whether authorized or unauthorized".

Claimant further testified that at a later time, which he could not specifically identify except that it was not 4:10 PM and that it was dark, he saw a friend's truck parked in the vicinity of the shop entrance and walked across the street to talk to this friend. He then saw Mr. Campitella and merely asked him whether he had Claimant's name on his sheet. Nothing further was said by either.

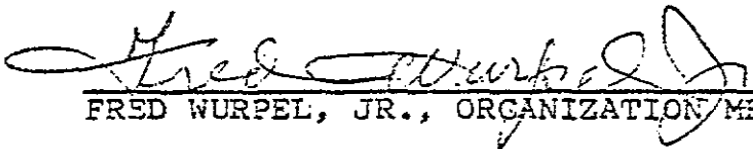
We conclude that Carrier had before it credible and convincing evidence that Claimant was not only a striker and a picketer in this illegal and unauthorized strike but that, in the course of it, he was guilty of abusive and threatening behavior towards a management representative, all justifying, in total, forfeiture of further employment here.

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