

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

Docket No. 429

STATEMENT OF CLAIM:

1. The dismissal of Claimant John B. Boggs was arbitrary, capricious, unreasonable and without just and sufficient cause.
2. Claimant Boggs should be exonerated of all charges and 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 and 5:30 PM and 11:15 PM on September 28, 1978 and at 4:05 PM and 5:15 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 were picketing at Broadway Road Entrance at 5:30 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 opinion on certain procedural and substantive questions raised by Organization there as well as here.

Turning to the particular facts revealed in the record concerning Claimant's culpability in this situation as a striker and picketer, the Board does not find Carrier to have acted contrary to a reasonable evaluation of the evidence put before it, in having decided that Claimant was not only one of the unauthorized strikers on the 2 days in question but that he made appearances among groups of strikers at locations and with posture and demeanor which marked him as an active abetter and augments of the striking and picketing efforts. We realize that trial officer and Carrier had to make credibility choices in reaching their decisions, but we find no basis for deciding that

such choices were not deservedly made.

In respect to the contention and to testimony that Claimant - and others - were intimidated into striking by two visitors from the N&W Railroad strikers, we must support Carrier in its skepticism that these two individuals could be and were objectively conceived by Claimant and others as having the coercive power to command the unwilling obedience of so large a group, including Claimant. We support Carrier, also, in distinguishing between those who might genuinely have had such fears and consequently went and stayed home and those who made appearances as part of the picketers at additional times at plant entrances on these two days. In Claimant's case, there has been a substantia' showing that he added to his striker role that of a picketer at at least three times other than his starting times, at both his usual entrance and another one. One of these appearances was as late as 11:15 PM on September 28, 1978, after having first arrived at the scene at 3:20 PM.

In the course of his testimony, Claimant admitted that he was advised by his union representative that the strike was illegal. The fact that he did not return to work (in spite of the official having allegedly expressed fears of doing so himself) adds to his culpability.

Like others, Claimant refused an order from management to end his participation in the illegal stoppage. As in the case of

others, this must be added in as a significant increment of culpability.

A consideration deserving credibility attention is raised by the testimony concerning the remarks allegedly made by Carrier witness Barkhurst in trial ante room in which he is alleged to have expressed hostile purposes in the testimony he was about to give concerning Claimant. Hearing officer had the right to choose Barkhurst's denial as more credible than that of his two accuser witnesses. It is well settled that we cannot and should not substitute ourselves for hearing officers in making such credibility choices. But we must add that even if the statements attributed to Barkhurst by Claimant's witnesses were to be fully believed, it could reasonably be taken as a declaration of Barkhurst's satisfaction in having the opportunity to reveal the truth concerning Claimant. The fact that this thought was so viciously expressed by Mr. Barkhurst might very well have been prompted by the sting of the hostile personal manner in which, according to Barkhurst, Claimant had reacted to his request to move his truck off Company property. This Board in no way condones such countering rancor and hostility as reflected in the alleged Barkhurst statement outside the trial room, but we do not find a basis in them on which to fault Carrier for not finding them either to have discredited Barkhurst's credibility concerning the determinant factors on which Carrier acted or to impeach the total trial evidence adding up to a justified finding of guilt on the charges for which Claimant was tried.

We are of the opinion that, in sum, Carrier did not abuse its authority for insisting on the honoring of an existing collective agreement by one who was a constituent party to it or by imposing the penalty of termination in reaction to this individual's aggressive participation in the costly, unauthorized, illegal activities in destruction of such contractual commitment. We conclude that Carrier must be supported in having found Claimant guilty in degree and kind of the actions charged so as to justify the discharge penalty imposed.

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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