

PUBLIC LAW BOARD NO. 2420

AWARD NO. 26

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CONSOLIDATED RAIL CORPORATION

DOCKET NO. 434

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 40-days' suspension on M.W. Repairman G. R. Koah, November 22, 1978.
- (b) Claimant Koah's record be cleared of the charge brought against him on October 12, 1978.
- (c) Claimant Koah 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 forty (40)-days' suspension on 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 Canton MW Shop at 3:45 PM on September 28, 1978 and at 4:05 PM on September 29, 1978.
- 3; 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 suspension 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:

1. In the early stages of the trial held on October 24, 1978, Claimant was asked by whom he was represented, and he named District Chairman M. W. Phillips and Vice Chairman F. J. Lecce. When then asked which of these was to be his spokesman, he responded, "Both of them". He was then informed by trial officer that only one was to be permitted to be his spokesman and asked to name his choice. Claimant stated, "This is a mistrial then" and his District Chairman, stating that trial officer's requirement denied Claimant entitled representation, moved for "mistrial" and advised Claimant to refuse to answer any questions. When the trial officer attempted to proceed further without complying with District Chairman's motion, Claimant, District Chairman and Vice Chairman left trial room. Pro-

ceedings were then continued, in their absence.

2. R. Campitella, Shop Engineer, testified that (a) he observed a work stoppage at the Canton M. W. Shop on September 28 and 29, (b) he observed Claimant standing at the main entrance of the shop at 3:45 P.M. on September 28 and at 4:05 P.M. on September 29 (Claimant's regular schedule was 7:00 A.M. to 3:30 P.M.) "milling around" with second trick employees in the presence of a strike sign, (c) at 3:45 P.M. on September 28, 1978, he read an order to the group gathered at the main entrance directing them to return to work. Neither Claimant nor others obeyed that day or the next.

3. Assistant Equipment Engineer L. W. Dubois testified that he too observed the unauthorized work stoppage in progress and both at 3:45 P.M. on September 28 and 4:05 P.M. on September 29 observed Claimant among a group of strikers and picketers at both these times at the main entrance in presence of picket signs. He further testified that he was present on September 28, 1978 at approximately 3:45 P.M. when he heard Mr. Campitella address a group of strikers and picketers at the entrance to the Canton Shop ordering them back to work and that the order was not obeyed.

In respect to Organization's contention that Claimant was denied a fair and impartial trial in violation of his rights under the applicable Rules, as we have indicated in cases of similar situations where the same contention was raised, trial officer acted permissibly in requiring Claimant to make use of a single of his representatives as an active interrogator and advocate in the trial proceedings for purposes of fair and orderly procedure. We

find no violation of Claimant's procedural rights in this.

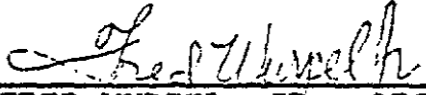
It is to be regretted that Claimant and his representatives reacted to trial officer's ruling by choosing to absent themselves from further proceedings. But this is a choice they made. Under the circumstances, we see no basis on which to find that trial officer's continuation of the hearing in their absence was not valid; we are compelled to uphold his right to rely on the evidence thus adduced.

As for the merits of the charges, we find that, under the circumstances revealed, Carrier acted within its rights in imposing the subject disciplinary suspension.

A W A R D

Claim denied.


LOUIS YAGODA, CHAIRMAN & NEUTRAL


FRED WURPEL, JR., ORGANIZATION MEMBER


N.M. BERNER, CARRIER MEMBER

DATED November 2, 1979.