

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CONSOLIDATED RAIL CORPORATION

DOCKET NO. 435

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 Welder D. E. Mammone, November 22, 1978.
- (b) Claimant Mammone's record be cleared of the charge brought against him on October 13, 1978.
- (c) Claimant Mammone 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, September 28, 1978 and September 29, 1978.
- (2) "Engaging, abetting and participating in an unauthorized work stoppage at Canton MW Shop at Main Entrance-Division Road at 2:00AM on September 29, 1978 at Broadway Road Crossing at 4:05PM and 5:30PM on September 29, 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 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 work on September 28 and 29, 1978 at the Carrier's Canton Maintenance of Way Shop where he was employed as a welder with tour of duty from 7:00 AM to 3:30 PM.

2. In his testimony, Claimant gave as his explanation for not being at work on those days as following: When he appeared for work on September 28 at the entrance to the plant property, he saw a large group of his co-workers at the entrance with a strike sign, "and I didn't want to go through them ... I don't know what they were doing. They was honoring a picket line. That is all I know"; or for September 29, assuming that the situation was the same, "I didn't even show up that morning. I slept". He did not call in on either day.

3. Testimony by Equipment Engineer R.E. Brower was that he saw Claimant at approximately 2:15 AM on September 29 with six other strikers at the main entrance to the Shop. This testimony was corroborated by that of Assistant Equipment Engineer H.F. Reedy, who had accompanied Mr. Brower. According to Mr. Reedy, a strike sign was on display where the group, including Claimant, was stationed.

4. Testimony was also given by Shop Engineer R. Campitella that on September 29, Claimant was among a group of strikers positioned at the Broadway Road entrance to the Canton M.W. Shop at 5:30 AM.

5. Claimant admitted that he was at the main entrance to the Shop at approximately 2:00 AM on September 29 and at the Broadway entrance at approximately 4:05 PM and 5:30 PM that same day. He explained the 2:00 AM appearance as due to the fact that he had been at a night club, and after leaving it, came by with his girl friend to find out whether there would be work that day or whether he could sleep past starting time. In respect to the 4:05 PM appearance, he was on his way to a new house that he had just bought and passed the picketing group on the way. His attention was caught by the fact that Mr. Campitella and another individual were "giving out papers" (evidently a reference to the distribution of copies of the court injunction papers) and stopped merely to see what was going on. He did not accept one of the papers being issued. In respect to his

having been there at 5:30 PM, he stated that he might have been there at that time rather than at 4:05 PM.

6. Testimony was given by another employee of the Canton M.W. Shop that, as stated by Claimant, he saw the latter at a lounge between midnight to about 1:30 AM on September 29, where the witness played in the band. The witness further testified that Claimant was accompanied at the lounge by a female companion and at about 2:00 AM, when the witness left the lounge or bar, he saw Claimant again with his companion "alone at the top of the hill" where the main entrance to the Canton Shop is located.

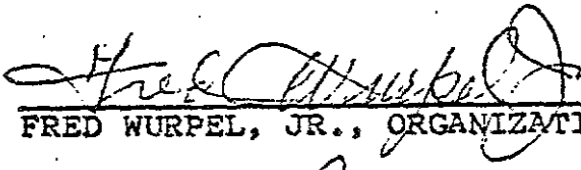
The evidence appears to us to show that, although one of the illegal and unauthorized strikers, Claimant's participation in promoting or augmenting picketing activities appears to have been minimal compared to others. We believe that his guilt in degree and kind of the charges on which he was tried was such as to call for amendment of the discharge penalty to one of a forty (40) days' suspension and we shall so award.


A W A R D

Claimant's discharge shall be amended to a forty (40) days' disciplinary suspension. He shall be reinstated to his former position within thirty (30) days with restitution to him of lost

earnings for all but the first forty (40) days immediately following his dismissal.


LOUIS YAGODA, CHAIRMAN & NEUTRAL


FRED WURPEL, JR., ORGANIZATION MEMBER


N.M. BERNER, CARRIER MEMBER

DATED

October 5, 1979