

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

DOCKET NO. 436

STATEMENT OF CLAIM:

1. The dismissal of Claimant Wilbur F. Looby was unfair, arbitrary, capricious, unreasonable and without just and sufficient cause.
2. Claimant Looby should be exonerated of all charges, 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 7:00 AM, September 28 and 29, 1978.
- 2 - Engaging, abetting and participating in an unauthorized work stoppage at Canton MW Shop Broadway Road Entrance at 8:30 AM and the YMCA-Engine House entrance at 9:10 AM on September 28, 1978, and at the YMCA Engine House at 6:00 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 the YMCA Engine House entrance at 9:10 AM on September 28, 1978.
- 4 - Insubordination in that you refused a direct order to return to duty from E. T. Daley, Field Equip. Engr. at 8:30 AM 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. It is undisputed that Claimant did not perform any work for Carrier nor appear at his usual work place at Carrier's Canton Maintenance of Way Repair Shop on September 28 and 29, 1978, both scheduled work days and where Claimant was assigned to a regular 7:00 A.M. to 3:30 P.M. tour of duty.

2. In his testimony, Claimant's explanation of his absences on these days was that on both mornings he followed his usual plan of access to the plant property, but found strike pickets at the entrance and decided not to go through the group because of fears for his safety. He further said that he tried entrances other than his usual one, but found them blocked too. He also stated, however, that no one told him not to cross the picket lines on either of the days.

3. Testimony was given by Field Equipment Engineer E.T. Daley

that he was at the Broadway Road entrance to the Canton shop property at approximately 8:30 A.M. on September 28, 1978, to carry out management's direction to instruct the strikers to return to work. As a means of doing so, he informed the group there gathered that they were participating in an illegal strike and were expected to come back to work. Claimant was one of those in the group when the statement was made to them. Mr. Daley then asked those present for their names.

4. Assistant Cost Analyst J. Blaser testified that he was present at the same place with Mr. Daley and H. Reedy, another management representative, and corroborated Mr. Daley's testimony.

5. Master Mechanic R.F. Brickley testified that on the morning of September 28, 1978, at management's direction, he went to the Broadway Road entrance to the plant property, the main gate entrance and the so-called YMCA roadway entrance leading to the Engine House of the Shop. He was at the latter entrance at approximately 9:10 A.M. where he saw a vehicle parked in the roadway area, partially blocking the road, with Claimant seated in it at the driver's seat. While Assistant Supervisor Guveiyian (who had accompanied Brickley) conversed with Claimant, Brickley took a photograph of them. The photograph was put into evidence.

6. Mr. Guveiyian testified to the same effect. He stated that Claimant gave his name when asked to by Guveiyian and when asked what he was doing there, said he was just sitting there watching the truck which did not belong to him. Guveiyian then asked him to take the vehicle off Con Rail property. Claimant then drove the truck away.

7. Shop Engineer R. Campitella testified that he was at the YMCA entrance at approximately 6:00 A.M. on September 29, 1978 and

observed a vehicle there at a point at which a strike sign was displayed. One of two men standing there was Claimant.

8. Equipment Engineer E. Waggoner testified that he had accompanied Mr. Campitella and was there at the same time and place and also identified Claimant as one of the two individuals there.

9. Claimant testified that he was in the strikers gathering at about 8:30 A.M. on September 28, 1978. He further stated:

"The way I understand it, a ConRail supervisor came down there; and he said you guys are supposed to go back to work. But I didn't know for sure -- there was a whole bunch of us, maybe fifteen; and I could have mistaken what he said. I don't know exactly."

He further stated that he "stayed around" there until 8:30 A.M.

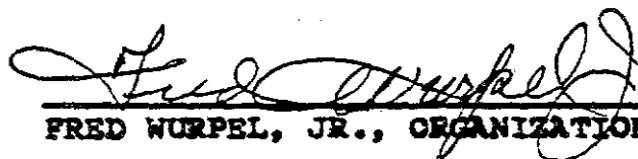
He also admitted that he was seated in the truck at the YMCA entrance at about 9:10 A.M. on September 28, 1978 when his picture was taken, conversing with Mr. Guveiyian. He added, however, that he was not blocking any entrance. "I was parked over in the weeds just waiting to go to work."

We find the evidence to have furnished legitimate grounds on which Carrier was entitled to reach the decision that Claimant was an active participant in the illegal and unauthorized strike of September 28 and September 29, 1978 in such nature and degree as to justify the dismissal 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