PUBLIC LAW BOARD NO. 2420

AWARD NO. 30

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

vs.

CONSOLIDATED RAIL CORPORATION

Docket No. 438

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 MW Repairman Helper, Daniel A. DeChiara, November 22, 1978.

b) Claimant DeChiara's record be cleared of the charges brought against him on October 13, 1978.

c) Claimant DeChiara 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 7:00AM on September 28 and 29, 1978.

2. Engaging, abetting and participating in an unauthorized work stoppage at Canton MW Shop at 8:30AM and 3:45PM on September 28, 1978, and at 4:05PM and 5:30PM on September 29, 1978.

3. Insubordination in that you refused two direct orders to return to duty; from E.T. Daley, Field Engineer, at 8:30AM on September 28, 1978 and from R. Campitella, Shop Engineer, at 3:45PM 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 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. It is undisputed that Claimant absented himself from work on September 28 and 29, 1978 at the Canton Maintenance of Way Shop where he was scheduled to work on those days on his usual 7:00AM to 3:30PM tour of duty.

2. Claimant's explanation at trial was that he "tried to come to work but there was a strike sign and people standing around and I wasn't about to cross it."

3. Carrier witnesses testified:

a) Claimant was seen at the Broadway Road Crossing entrance to the plant at 8:30AM on September 28, was asked his name, and identified himself.

b) At that time, an order was issued to the group there gathered, including Claimant, by Field Engineer E.T. Daley to return to work. None obeyed.

c) Where the group was congregated there was a strike sign on display.

d) Claimant was again seen with such group, again with a strike sign on display, at the main entrance (Division Road) of the Shop at approximately 3:45PM on September 28.

e) At that time, Shop Engineer R. Campitella informed the group, including Claimant, that the Shop was open, the employees were to report to work and, if they did not, disciplinary action would be taken. None obeyed.

f) Claimant was also observed with a group of picketers at 3:45PM on September 28 at the main entrance and at 5:30PM on September 29 at the Broadway Road entrance, each time he was one of those "milling around" and a strike sign was on display where the group was located.

4. Claimant admits that he was present among the strikers on September 28, 1978, at approximately 8:30AM at the Broadway Road entrance. He "stayed around for a while, went home, came back, just to see what was going on." He came back "early in the afternoon" and sat in his car on the parking lot across the street from the entrance.

As to September 29, Claimant testified that he "might have been around" the Shop entrance at "some time around" the 4:05PM time mentioned by Carrier witnesses.

As to the order testified to as having been given by Mr. Daley at approximately 8:30AM to the group gathered at the Broadway Road entrance on September 28, Claimant stated: "I did not hear him directly tell me to go to work. I just seen a bunch of people in white hats talking, but I didn't hear anything - exactly what was happening. So many people around and stuff."

Concerning Mr. Campitella's alleged order to a group of which he was a part on September 29, 1978 at 3:45PM, Claimant testified that he was at the site identified, but "I did not hear him give me no direct order, and I don't see why he should after 3:30." He did say, however, that he saw Mr. Campitella walking around and writing down names.

We conclude that Carrier was justified in finding Claimant to have been more than a merely curious and innocent bystander, as alleged by Claimant, but, instead, a participant in picketing activities.

On the whole record, we find Carrier was justified in deciding that Claimant was guilty in degree and kind of the charges on which he was tried as to justify the termination penalty imposed on him.

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