

PUBLIC LAW BOARD NO. 2420

AWARD NO. 32

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CONSOLIDATED RAIL CORPORATION

DOCKET NO. 440

STATEMENT OF CLAIM:

- (a) The Carrier violated the Rules Agreement, effective December 16, 1945, as amended, particularly Rules 5-A-1, 5-E-1 and the Absenteeism Agreement of January 26, 1973, when it assessed discipline of dismissal on M. W. Repairman F. W. Safreed, November 22, 1978.
- (b) Claimant Safreed's record be cleared of the charge brought against him on October 13, 1978.
- (c) Claimant Safreed 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 subsequently disciplined by discharge for the following charges:

- 1; Failure to report for duty on your regular assignment at 7:00 AM on September 29, 1978.
- 2; Engaging, abetting and participating in an unauthorized work stoppage at Alliance Shop at 8:30 AM 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 Webb St.

Entrance to Alliance Yard at 8:30 AM on September 29, 1978 and in that you caused a work stoppage on Surfacing Gangs ST 241 and ST 242 at mile post 32.5 on the Bayard Branch East of Salinesville Ohio at 11:45 AM 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 not disputed that Claimant who was regularly scheduled as an M. W. Repairman at Alliance Repair Shop, Alliance, Ohio failed to report for work on September 29, 1978, one of two days when illegal and unauthorized striking and picketing was going on at the M. W. Repair Shop at Canton, Ohio, about 17 miles away. His work schedule there was 7:00 A.M. to 3:30 P.M.

2. Claimant's testimony is that upon arriving at the entrance regularly used by him at the Alliance Repair Shop, on the morning of September 29, he found a picket line across the

entrance. He states: "Also because of the men outside, and my safety was involved, and I was not sure of the safe working conditions" he decided not to enter the premises for work. He admits that he did not call in to advise management of this. Claimant further stated that he continued to stay among the group gathered outside the Alliance property because, "I was trying to find out exactly what was going on and trying to find out if any of my co-workers had showed up".

Testimony as to the presence and activities of Claimant on September 29, 1978 at the Alliance Repair facility was given by other witnesses, as follows:

a. Assistant Equipment Engineer R. P. Muir testified that he observed Claimant standing at the Webb Street entrance to the Alliance facility on September 29, 1978.

b. Assistant Cost Analysis J. B. Blaser testified that he saw Claimant at the Webb Street entrance to the Alliance Yard at about 8:30 A.M. on September 29, 1978 together with about three others whom Mr. Blaser recognized as not employed at the Alliance Yard Shop, but whom he identified as employees of the Canton MW Shop.

4. Another line of testimony was on the subject of Claimant's illegal activities in the area of Salinesville, Ohio, 38 or 39 miles away from Canton where Carrier had two Surfacing Gangs working on its trackage (on the so-called Bayard Branch).

a. Supervisor, Production G. A. Bennett testified that at approximately 11:45 A.M. he was at the Bayard Branch location with Surfacing Gang ST 241 when one of the members of his crew

told him that four men in a van claiming to be strikers from Alliance and Canton were seeking to talk with him. Bennett drove to the point about one-half mile away where these four were seated in a van at a private crossing. Bennett recognized only one of these -- the Claimant, and asked him what they were doing there.

According to Bennett, the occupants of the van told him that they were on strike and that they were going around trying to stop all work. Bennett quotes himself as responding that ConRail was not on strike; N & W was and ConRail employees had nothing to gain from joining them. Claimant then said to him, "We want you to stop working and go home".

Mr. Bennett's further testimony is that members of the ST 242 gang were standing nearby while this conversation was going on and upon hearing it, "started to get excited and riled up; and they started making comments to the effect that ConRail was on strike; they didn't want to work; they wanted to go home, et cetera, et cetera.

"So in the best interests of the men and the Company, I instructed the foreman to make a run over and put the machinery in the clear".

b. Further testimony on the incident was given by Assistant Supervisor R. W. Pennel, as follows:

He was in charge of Surfacing Unit ST 242 at the time at the Bayard Branch in Salinesville and was present during the episode described by Mr. Bennett. He stated that the Surfacing Unit

employees left their machines and went to the van; he identified Claimant as one of those in the van; he quoted the occupants of the van as stating that ConRail employees were on strike in sympathy with W & N employees and then instructing the gang working at Bayard to stop working. However, when questioned again by Claimant's representative whether he saw Claimant talking to the track employees, Mr. Pennel responded, "I don't remember," but stated that he did hear Claimant order Supervisor Bennett to stop the work. When asked again by Claimant's representative whether he saw Claimant go to the track area and attempt to stop employees from working, Mr. Pennel responded, "Yes, I did", but then followed this by the statement: "He was sitting in a van, approximately five feet from the railroad".

c. In his own testimony, Claimant stated that on September 29, he learned that strikers may have been going out that day to the Salinesville area to "create problems with the working people down in that area". Because of this, Local President S. Risaliti decided to go to the area. He asked whether somebody would show him how to get there. Claimant volunteered. At the time of the conversation, Claimant and Risaliti were at Canton. Mr. L. DePan, a Canton striker, consented to use his van and he drove the other two to Salinesville. At Salinesville, none of the occupants of the van got out of

it at any time. He recalled that Mr. Bennett walked up to the vehicle and asked why they were there. According to Claimant, he responded by saying that he had come there to show Mr. Risaliti the way. There were M. & W. machines working in the area.

c. Testimony by L. DePan was that Claimant had gone with him and Risaliti to Salinesville to show them how to get there. He said also that the reason for the trip was to check on reports that some individuals had been there to "cause people trouble" and the group decided to go there to prevent it. He denied that their intention was to stop the work. The group stayed about 10 minutes, and the gang there was still at work when they left. The group never got out of the vehicle.

We conclude that Carrier had a material, probative and credible basis for resolving the conflict between the versions of the Salinesville incident given by the striking participants there and that given by the supervisors, by putting more credence in the latter.

Whether the supervisors felt compelled to order their men to put the machines away, knowing that they had a stoppage on their hands, or the stoppage took place more spontaneously, or whether the visitors did or did not leave their truck, is besides the point. Carrier was justified in believing that Claimant had journeyed to Salinesville as part of a mission

to spread the wildcat strike originating at Canton and had there helped to exercise efforts in such direction. Add to this, Claimant's having himself spread the strike to Alliance by his actions as an employee there, and we must find that Carrier acted on valid and justifiable grounds in imposing the termination penalty on this employee.

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