

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CONSOLIDATED RAIL CORPORATION

DOCKET NO. 412

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 M.W. Repairman Helper, Randy L. Hood, November 22, 1978.
- (b) Claimant Hood's record be cleared of the charge brought against him on October 13, 1978.
- (c) Claimant Hood 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 and September 29, 1978.
- "2. - Engaging, abetting and participating in an unauthorized work stoppage at Canton MW Shop at 4:05 PM and 5:30 PM 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 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. The on-the-property trial held on the subject charges was marked by a procedural variance which Organization contends constituted a failure to give Claimant a fair and impartial hearing. Early in the hearing, the trial officer directed one of the representatives of the Claimant (not acting as his spokesman) to desist from handing notes to Claimant while he was being questioned. As the result of this, both representatives of Claimant and Claimant left the trial and it was continued by the trial officer without their presence or participation. Claimant contends that such action constituted harassment and improper procedure by trial officer in denial of a fair and impartial hearing.

So far as can be determined from the record, it is our opinion that trial officer made no improper ruling and did not, by his actions, compel the Claimant or his representatives to leave the

hearing. It was their own decision to do so and by so doing, they deprived themselves of further presence and participation in the proceedings. Trial officer was entitled to proceed thereafter in their absence and receive and act on the evidence made available to him.

2. Testimony given at trial revealed:

(a). Claimant did not appear for or perform his scheduled work on September 28 and 29, 1978 at the Canton MW Repair Shop where he was employed as a Repairman Helper with a tour of duty of 7:00 AM to 3:30 PM.

(b). Claimant was present among unauthorized strikers "milling around" at Division Road Shop entrance where strike signs were on display, at approximately 4:00 PM. He was observed again, in the presence of a group of strikers and pickets, at 5:30 PM at the Broadway Road entrance to the Shop where a strike sign was on display.

On the basis of the record, we conclude that, in relative terms, the participation of and augmentation of Claimant in the picketing activity has not been shown to be such as to justify a dismissal penalty; a suspension without pay for a period of sixty (60) days would be more equitable.

A W A R D

Claimant shall be reinstated to his former position within

thirty (30) days with restitution to him of earnings lost from the date following the first sixty (60) days after his discharge until the date of his reinstatement.

Louis Yagoda
LOUIS YAGODA, CHAIRMAN & NEUTRAL

Fred Worpel, Jr.
FRED WURPEL, JR., ORGANIZATION MEMBER

N.M. Berner
N.M. BERNER, CARRIER MEMBER

DATED

September 5, 1979