PUBLIC LAW BOARD NO. 877

PARTIES TO DISPUTE: Brotherhood of Locomotive Engineers

and

Chicago River and Indiana Railroad Company

STATEMENT OF CLAIM:

Case No. 1-71 - Exhibit "F"

Engineer Balchunas:
March 12, 1971, for 8 hours pay
March 14, 1971, for 8 hours pay
March 15, 1971, for 13 hours and 55 minutes pay
March 16, 1971, for 11 hours and 20 minutes pay
March 17, 1971, for 11 hours and 25 minutes pay
March 18, 1971, for 13 hours and 55 minutes pay
March 19, 1971, for 8 hours pay
March 21, 1971, for 11 hours and 40 minutes pay
March 22, 1971, for 13 hours and 40 minutes pay
March 23, 1971, for 12 hours and 40 minutes pay
March 24, 1971, for 12 hours and 20 minutes pay
March 25, 1971, for 12 hours and 20 minutes pay
March 26, 1971, for 11 hours pay
March 28, 1971, for 8 hours pay
March 29, 1971, for 9 hours pay
March 30, 1971, for 13 hours and 55 minutes pay
March 31, 1971, for 8 hours pay

Case No. 2-71 - Exhibit "F"

Fireman T. E. Kelley:
March 12, 1971, for 8 hours pay
March 13, 1971, for 9 hours and 15 minutes pay
March 15, 1971, for 8 hours pay
March 16, 1971, for 8 hours pay at engineers rate
March 17, 1971, for 8 hours pay at engineers rate
March 18, 1971, for 13 hours and 55 minutes pay at engineers rate
March 19, 1971, for 8 hours pay
March 20, 1971, for 11 hours pay

March 22, 1971, for 8 hours pay at engineers rate
March 23, 1971, for 8 hours pay
March 24, 1971, for 8 hours pay at engineers rate
March 25, 1971, for 8 hours pay
March 26, 1971, for 11 hours and 30 minutes pay at engineers rate
March 27, 1971, for 10 hours and 40 minutes pay
March 29, 1971, 8 hours pay at engineers rate
March 30, 1971, for 8 hours pay
March 31, 1971, for 8 hours pay

Case No. 3-71 - Exhibit "G"

Engineer Balchunas
and Fireman Kelley: March 11, 1971, for 8 hours pay each

FINDINGS: By reason of the Agreement dated January 13, 1972, and upon the whole record and all the evidence, Public Law Board No. 877 finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction.

On March 11, 1971, Claimants were Engineer and Fireman on Crew No. 29 working in the so-called State Line-West Side District in Chicago, Illinois. For about a month prior to and on that date the Continental Can Company plant was strikebound. At about 3:30 P.M. on that date the train operated by the Claimants stopped near the entrance to the Continental Can Company premises. They refused to proceed further. The Superintendent removed them from service.

By letter dated March 12, 1971, their removal from service was confirmed and they were advised to attend an investigation on March 16, 1971, to determine "responsibility, if any, for insubordination when you refused to perform switching service at Continental Can Company . . . as ordered by J. A. Fraser, Terminal Superintendent, at approximately 3:30 P.M., March 11, 1971." After the investigation, the Claimants were advised on March 19, 1971, that they were dismissed from service. They were reinstated on April 1, 1971. The claim here is for compensation for the days they were held out of service.

Employes contend that the Claimants "were not afforded the fair and impartial investigation to which they were entitled under the Investigation Rule" and "that the record did not establish guilt of insubordination as attributed to claimants."

Carrier argues (1) that the Claimants were reinstated with the clear understanding and agreement between the Superintendent and the General Chairman that the Claimants would receive no pay during the time they were held out of service, (2) that they were guilty of insubordination as charged and (3) that the penalty of dismissal was warranted.

Article VIII of the Agreement contains the following:

> "No engineer will be suspended or discharged without first having a fair and impartial hearing and his responsibility established. The investigation shall be held within thirty (30) days after date of occurrence."

Neither that rule nor any other in the schedule agreement specifically permits the Carrier to hold an engineer or fireman out of service before an investigation. There are, of course, circumstances which may compel the Carrier to send an employe home before a hearing. Theft, assault, drunkeness are obvious conditions when employment may be suspended pending a hearing. But alleged insubordination arising out of a strike situation such as we have here is not one of them. Too many probabilities exist before absolute insubordination is established. Carrier violated this rule when Claimants were held out of service between March 11 and March 19, 1971.

All of the crew members of Run 29 refused to take the train into the premises of the Continental Can Company. The Superintendent spoke to each and upon refusal took each out of service. No one, except the Terminal Superintendent, the Engineer, the Fireman, the Engine Foreman and the Switchman were present at the rail entrance to the Continental Can Company. No pickets were at the entrace at the time.

The Superintendent acted as he did because some one at the Continental Can Company allegedly told him on the telephone that the President of the striking Steelworkers Local Union agreed to permit the railroad to make the switching moves "providing it only involved gondolas for scrap." This was supported by testimony of the Can Company supervisors. Fraser also testified that the Can Company's representative assured him "that he would have a representative of the Can Company there to see that there was no interference." That testimony was not refuted by Can Company witnesses. The only Can Company man who came on the scene a little later was their Shipping Foreman. No representative of the Steelworkers Union was there.

The record shows, however, that the Yardmaster left a note for the Engine Foreman on March 11, 1971, which reads:

> "Union Officials from the Can Company Union will meet you at the Continental Can Company at 2:30 P.M. to give you permission to pull and set track TR-2 per J. Fraser.
> "Bill C."

"Bill C." is the Yardmaster and "J. Fraser" is the Superintendent who spoke to the Claimants, ordered them held out of service, and preferred charges against them. Mr. Fraser admitted that he at no time spoke to any one of the Steelworkers Union and at no time did he seek confirmation from them of the alleged arrangements.

The Superintendent also testified that Claimant Balchunas told him that he had been threatened a day before the incident. Yet he ordered him and the other crew men to cross into the strike area. When Claimant Balchunas protested his dismissal from service on March 11, and told the Superintendent that never before did Supervisors compel crew men to enter strike areas and that Supervisors took trains in, the Superintendent replied that the "officials were wrong in doing this." [redacted] BED

A careful reading of the investigation record clearly shows that the Claimants had every reason to fear bodily harm. They were warned and threatened by employes on strike. Imminent danger is not confined to a single instance when no pickets are present at a particular entrance. Unlike the circumstances in the claim adjudicated in Award No. 29 of Special Board of Adjustment No. 589, valid substantive reasons do exist here to justify Claimants' refusal to switch the struck plant.

A Steelworker member on strike, who was a strike counselor, testified that neither he nor any other member was advised of an alleged agreement on February 18, 1971, to permit the Can Company to switch gondolas. He also testified that he was in his Union Hall on March 11, 1971, between 2:30 and 3:00 P.M. One of the pickets approached him and said that one of the trainmen went to the picket line and "wanted to know if we would give him permission to pull those cars." He could find no record of such permission. He, nonetheless, went to the scene with the trainman and he saw the "train was coming out with those two cars." When he learned that the trainman (Russell) had been taken out of service he tried to stop the switching.

The substance of the Steelworker's testimony shows that the Superintendent acted impetuously and completely irrationally. If he, instead, of the trainman, had made inquiry of the Steelworker Union the unfortunate incident could have been avoided.

In view of all the evidence in the record, the Board finds that the Carrier was arbitrary, capricious and totally unreasonable in dismissing Claimants from service. In view of this finding, there is lack of consideration to interpret the meeting of March 30, and the letter of March 31, 1971, as a binding agreement that the Claimants be reinstated without compensation for the time they were out of service. And this is also true in view of the fact that they were held out of service prior to the completion of the investigation contrary to the contract rules.

AWARD

Claims sustained. Carrier is directed to pay the claims within thirty (30) days of the date of this Award.

Executed at Chicago, Illinois, this 30th day of May, 1972.

PUBLIC LAW BOARD NO. 877

David Dolnick

DAVID DOLNICK, Chairman and Neutral Member

S. D. Dutrow

S. D. DUTROW, Carrier Member
(Dissenting)

R. E. Delaney

ROBERT E. DELANEY, Employe Member