

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE & STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS & STATION EMPLOYEES
PACIFIC FRUIT EXPRESS COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6330) that:

(a) The Pacific Fruit Express Company violated the current Agreement between the parties when, pursuant to investigation, it dismissed Mr. J. T. Duran from service notwithstanding the charge for which he was brought to trial was not proved; and,

(b) The Pacific Fruit Express Company shall now be required to restore Mr. J. T. Duran to service with all rights unimpaired and to compensate him for all wage loss sustained until reinstated to service with all rights unimpaired.

OPINION OF BOARD: Claimant in this case was charged with being absent without official leave on October 8th and 9th, 1966 in violation of Rule K. A formal investigation was held and Claimant was found guilty as charged. After considering his prior record of absenteeism, he was dismissed from the service.

There is substantial evidence in the record of the investigation to warrant the finding of guilty as charged. Claimant's averments to the contrary are not persuasive. The only question remaining for resolution is whether Carrier was permitted to consider the Claimant's prior record before assessing the discipline of dismissal. It is clear that his prior record was not introduced into evidence at the investigation, but was considered after the Claimant was found guilty of the charge. We can find nothing wrong with such a procedure. We will deny the Claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1968.