Award No. 16340
Docket No. CL-17142

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

PACIFIC FRUIT EXPRESS COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6349) that:

(a) The Pacific Fruit Express Company violated the current Agreement between the parties at Bakersfield, California, when on September 24, 1966, it dismissed employes Albert P. Ambriz, Frank M. Aries, Alonzo B. Flores and Hector F. Rodriguez from service pursuant to formal investigation at which the stated charges were not proved; and,

(b) The Pacific Fruit Express Company shall now be required to restore each of the above named claimants to service with all rights unimpaired; to reimburse them for all expenses incurred which would otherwise have been borne by the Company during the period held out of service; to reimburse them for all travel expenses necessary in other employment during said period; and to allow each of them all wage loss suffered from time dismissed until restored to service with all rights above specified.

OPINION OF BOARD: This is a discipline case involving the dismissal from service of the four Claimants for an occurrence which took place on August 13, 1966, at Carrier's Bakersfield Ice Plant, where Claimants were assigned, with hours Midnight to 8:00 A. M., with 20 minutes paid lunch period included.

On August 26, 1966, Claimant Albert P. Ambriz, who was acting as shift foreman on the night of August 13, 1966, was cited to appear at a formal investigation and hearing, the citation reading, in part:

"You are hereby notified to be present at office of PFE Plant Manager, Bakersfield, California, at 10:00 A. M. September 1, 1966, for formal investigation of your alleged non-attendance to and non-performance of duty when you were observed sleeping on the job on August 13, 1966 at approximately 4:30 A. M. at the PFE Bakersfield Ice Plant, for which occurrence you are hereby charged

with responsibility which may involve violation of PFE Company General Rule J, reading as follows:

> 'We must devote ourselves exclusively to our duties during working hours; inattention to or non-performance of duties cannot be permitted.'

Also, for formal investigation of your alleged failure to report to your immediate supervisor knowledge of alleged misconduct of employes under your direct supervision which occurred approximately 4:00 A. M., August 13, 1966 at the PFE Bakersfield Ice Plant, for which you are hereby charged with responsibility which may involve violation of that portion of PFE Company General Rule C, reading as follows:

> 'Any misconduct or negligence or withholding information about such will not be condoned.' "

On the same date Claimants Frank M. Aries, Alonzo B. Flores and Hector F. Rodriguez were each cited to appear at a formal investigation and hearing, the citation in each instance reading, in part:

"You are hereby notified to be present at office of PFE Plant Manager, Bakersfield, California, at 10:00 A. M. September 1, 1966 for formal investigation in connection with your allegedly being under the influence of intoxicants on duty at approximately 4:00 A. M. August 13, 1966 at the PFE Bakersfield Ice Plant, for which occurrence you are hereby charged with responsibility which may involve violation of PFE Company General Rule G, reading as follows:

> 'The possession or use on duty of intoxicants or presence on duty in a state of intoxication is prohibited.'

Also for formal investigation of your alleged non-attendance to and non-performance of duty when you were observed sleeping on the job at approximately 4:00 A. M. August 13, 1966, at the PFE Bakersfield Ice Plant, for which occurrence you are hereby charged with responsibility which may involve violation of PFE Company General Rule J, which reads as follows:

> 'We must devote ourselves exclusively to our duties during working hours; inattention to or non-performance of duties cannot be permitted.' "

Two other employes, involved in Award 16341, were also cited at the same time.

A joint hearing pursuant to the citations was held on September 16, 1966, at which time the Claimants were present and represented by the Local Chairman of the petitioning Organization. A copy of the transcript of the entire hearing has been made a part of the record. Following the hearing the Claimants were dismissed from service.

In its claim to this Board the Petitioner alleges that "the stated charges were not proved", which was also the only allegation made in the handling

of the dispute on the property. In its submission to the Board the Petitioner alleges, for the first time, that Claimants' procedural rights were violated in the manner in which the investigation was conducted and the appeal was handled, but such contentions, not having been made in the handling of the dispute on the property, cannot be considered by the Board.

As concerns the merits of the case, a review of the transcript of hearing shows that there was substantial probative evidence to support the charges against the Claimants, and the nature of the offenses was such as to fully warrant dismissal from service. The fact that the evidence against the Claimants was furnished through the testimony of a patrolman and a special agent does not detract from it.

Based on the entire record, we find no proper basis for disturbing the action of the Carrier, and the claim will be denied.

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 Employes involved in this dispute are respectively Carrier and Employes within 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 by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1968

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