

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6694) that:

1. The Carrier violated the rule of the Agreement extant between the parties when it withheld Mr. Stanley L. Pierce from service and subsequently dismissed him on December 4, 1968, following investigation held on November 27, 1968.

2. (a) Mr. Stanley L. Pierce shall be restored to the service of the Carrier and (b) compensated from all wage loss sustained as a result thereof.

OPINION OF BOARD: On November 23, 1968 Carrier served a formal investigation notice upon the Claimant which, in part, reads as follows:

"Arrange to attend, as principal, formal investigation to be held in Western Pacific Trainmaster's Office, Western Pacific Yard Office Building, 1407 Middle Harbor Road, Oakland, California at 10:00 a.m., Wednesday, November 27, 1968 to ascertain facts and place your responsibility for your alleged violation of Western Pacific Rule "G" Form 809-P, General and Safety Rules For The Guidance of Employees in Freight House and Station Service, while on duty at Oakland Yard Office at about 1:15 p.m. Saturday, November 23, 1968 as Car and Train Desk Clerk."

This is a sufficient "specific charge" under Rule 45 of the Agreement. Claimant knew or should have known the nature of the rules he allegedly violated. He was neither misled nor deceived.

A careful reading of the transcript of the investigation can lead to only one conclusion, i.e., that the Claimant was under the influence of intoxicants while on duty in direct violation of Rule G and secondarily in violation of the other rules as charged. Under these circumstances, this Board is with-

out authority to disturb the dismissal. Long years of good and efficient service may be mitigating circumstances only when there is doubtful issue of guilt and when the penalty is too severe for the committed offense. Neither of these apply in this case.

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 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 17th day of July 1970.