

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 19792
Docket Number CL-19681

Alfred H. Brent, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employeea**

PARTIES TO DISPUTE: (

(Pacific Fruit Express Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7109)
that:

(a) The Pacific Fruit Express Company violated **the** current Clerks' Agreement between the parties when on March 16, 1971 it dismissed employee C. D. **McJimsey** from service based on charges not conclusively proved; and,

(b) The Pacific Fruit Express Company **shall** now be required to reinstate Mr. **McJimsey** to service with **all** rights unimpaired, to reimburse him for all expense incurred which it would otherwise have borne if he had not been dismissed, for travel expense **necessary** in other employment; and for eight (8) hours' compensation at the pro rata rate of his position beginning on March 1, 1971 and continuing for each work day until restored to service with all rights unimpaired.

OPINION OF BOARD: The thrust of the Organization's plea when this case was heard on the property was for an opportunity to rehabilitate the claimant and for leniency. The question of **whether** the claimant **was** in fact intoxicated **on** the day he **was** charged is not properly before the Board. In reviewing discipline cases this Board acts in an appellate capacity; **it** does not attempt to pass on the credibility of witnesses or **the** weight of the evidence. This Board has held that even where there is conflict between the testimony of the parties and there is a question raised as to whether **or** not the charges were proved beyond a reasonable doubt, that **where** the record made on the property contains substantial, competent and credible evidence to support the charges, the Carrier's decision as to degree of guilt and quantum of discipline should not be disturbed by this Board, absent affirmative proof that the Carrier acted in an arbitrary, capricious or vindictive way.

In this case the record on the property delineates the efforts of the parties to rehabilitate the claimant and therefore is dispositive of any charge that the Carrier might have acted in an arbitrary, capricious or vindictive way.

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- 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

The Agreement has not been violated.

A W A R D

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Hillen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1979.