

NATIONAL RAILROAD ADJUSTMENT B O A R D

THIRD DIVISION

Award Number 21624

Docket Number CL-21805

George S. Roukis, Referee

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

PARTIES TO DISPUTE: (

(Fruit **Growers Express Company**

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(**GL-8192**) that:

(a) The Company violated the Rules Agreement (effective April 1, 1943 as revised February 22, 1973) especially Rules 50, 51, 52, 53, 54, 55, 56, 57 **and** 58, when it assessed discipline of dismissal on **employees** J. S. Baker, J. G. **Dumasius** and W. D. Sysak at **Detroit, Michigan** on December 23, 1975.

(b) Claimants Baker, **Dumasius** and Sysak's records should be cleared of the charges brought against them on December 23, 1975.

(c) Claimants Baker, **Dumasius** and Sysak be restored to service with all seniority rights unimpaired and be compensated for all time lost during the period they were held out of service.

OPINION OF BOARD: As the result of an occurrence at the NW T.O.F.C. facility on January 4, 1975, each of the three (3) named claimants was **charged** in the United States District Court, Eastern District of Michigan with:

"Theft from Interstate Shipment under \$100.00
in violation of Title 18 U.S.C. Section 659."

Each claimant entered a plea of nolo contendere to the **charge**. The Court ruled in each case that the sentence as to **imprisonment** be suspended; that the defendant(s). be placed on probation for two (2) years; that **each make restitution in** the amount of \$60.00 and that each pay a fine of \$150.00.

Thereafter, each of the claimants was instructed by Carrier to appear for a hearing on the charge:

- "(1) The events surrounding your involvement in the theft from an Interstate Shipment at the **N&W** T.O.F.C. facility at Detroit, Michigan, approximately **4:30** P.M., January 4, 1975:
- "(2) Subsequent federal indictment returned by the Grand Jury filed in the U. S. District court - Eastern District of Michigan:
- "(3) Enter of plea of guilty to the charge of theft from Interstate Shipment **under** \$100.00 in violation of Title 18 U.S.C. Section 659."

At the time of the occurrence **in question**, Claimants Baker, **Dumasius** and Sysak had been **employees** of the Carrier for approximately 13, 7 and 16 months respectively.

An examination of the hearing record reveals that there is sufficient evidence to support the charge as made. As can be seen from the record, the charges stem directly from the action which was taken against the claimants in the U. S. District **Court.** **Petitioner contends** that the nolo contendere plea as entered by claimants in this case **was** not admission of guilt, per se. In these circumstances, we do not agree. The definition of nolo contendere as found in Black's Law Dictionary is:

"NOLOCONTENDERE. Lat. I will not contest it. The name of a plea **in** a criminal action, having the **same** legal effect as a plea of guilty, so far as regards all proceedings **on** the indictment, and on which the defendant may be sentenced. u. s. v. **Hartwell**, 3 Cliff. 221, F. Cas. No. 15,318."

From this plea, a guilty verdict was entered and sentence passed accordingly. There is nothing **in** the record to indicate that this definition of nolo contendere had any meaning other than "the same legal effect as a plea of **guilty**."

Pilferage from property entrusted to railroads for shipment is the bane of the transportation industry. The impact of distrust on this mode of transport is severely detrimental to both **employees** whose livelihood is derived from the patronage of shippers, as well as their employers. The seriousness of such actions **cannot** be minimized. In view of the seriousness of the occurrence and the **relatively short employment** of

the claimants, the discipline as assessed was not excessive or capricious. There are no mitigating circumstances present in this case to warrant questioning the discipline imposed upon the claimants. The Board **will** not substitute its judgment for that of the Carrier in this matter.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1977.