

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22908
Docket Number **MW-22922**

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Missouri Pacific Railroad **Company**
((formerly Chicago & Eastern-Illinois Railroad Company)

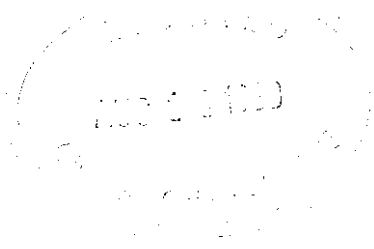
STATEMENT OF CLAIM: "Claim **of** the System **Committee** of the Brotherhood that:

(1) The dismissal of Machine-Operator G. **J. Hernandez** was improper and without just and sufficient cause **/System File S 214-91/**.

(2) The **claimant** shall be reinstated as **machine** operator with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant entered Carrier's service October 24, 1969. At the time of the occurrence giving **rise** to the dispute herein he was assigned as machine operator with Gang No. 8723. The members of the gang were staying at the Hotel Central in Villa Grove, Illinois. On December 27, 1977, he was notified to report for formal investigation to be held on January 5, 1978:

"to develop the facts and place your responsibility, if any, **in** connection with the charges that you were absent without proper authority from your assigned position of Machine Operator on Gang No. 8723, Headquarters Villa Grove, Illinois, on December 6, 7, 8, and 9, 1977, and conduct unbecoming an employee **in** connection with your entering Missouri Pacific Depot, **Villa** Grwe, Illinois, in a disorderly manner, and destroying company property at about **12:05** A.M. December 6, 1977, entering into an altercation with your **Foreman B.** Berg at approximately **12:15** A.M., December 6, 1977, assault and battering of **Effie** Jorgensen, **Owner** of Hotel Central, at approximately **12:15** A.M. December 6, 1977, which action resulted in your being arrested at Villa Grove, Illinois, at approximately **12:30** A.M. December 6, 1977 and being held by the Douglas County Authorities."



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The investigation was conducted **on** January 9, 1978. The claimant was present throughout the investigation and was represented by the General Chairman of the Organization. A copy of the transcript of the investigation has been **made** a part of the record. A review of the transcript shows that none of claimant's substantive procedural rights was violated in the manner in which the investigation was conducted.

Without detailing all the evidence adduced at the investigation, suffice it to say that there was substantial evidence in support of all the charges. The **claimant's** primary response was that he "had no knowledge" of the occurrences.

Based **on** the record, the Board concludes that **claimant was** guilty of conduct that simply cannot be condoned, and the Carrier was fully justified **in** dismissing him **from** service.

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:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this **22nd** day of July 1980.