Award No. 13804
Docket No. CL-14888

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY 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-5592) that:

(a) The Pacific Fruit Express Company violated the Agreement between the parties at Roseville, California, on August 27, 1963, when it dismissed Mr. M. W. Lockwood from service based on charges not proved and in violation of procedural requirements of the discipline rules; and,

(b) The Pacific Fruit Express Company shall now be required to restore Mr. M. W. Lockwood to service with seniority and all other rights unimpaired; to clear his record; to reimburse him for all monies disbursed for benefits which would otherwise be allowed under the Agreement had he remained in service; and to compensate him for all wage loss from August 12, 1963, until restored to service with seniority and all other rights unimpaired.

OPINION OF BOARD: Claimant, an oiler in Carrier's ice plant at Roseville, California, was dismissed on August 27, 1963, for alleged insubordination, neglect of duty, and carelessness.

Claimant was not present personally or by representatives of his own choice at the hearing that was held in the matter prior to his dismissal. There is no evidence that he received actual or constructive notice of the hearing, and we are not satisfied, from our analysis of the record, that he wilfully absented himself from the hearing or sought to avoid or obstruct the disciplinary machinery established by the Agreement. Claimant's explanation that he was not reached at his regular home address at Roseville in August because his family was away on vacation and he was in San Francisco seems reasonable and credible. There is no indication that Carrier tried to notify him in San Francisco, although his General Chairman's offices are located there and Claimant had informed the Plant Manager that he would be in that city for a few days.

Notice is an essential element in disciplinary proceedings and to deprive an employe of his position without an opportunity to defend himself is incom-

patible with elementary principles of fair play. Claimant did not receive the "fair hearing" to which he was entitled under Rule 38 (a). (We are in accord with Awards 4433, 4521, 10739, and others cited by Carrier, but do not find them applicable, on their facts, to the present situation. The discharge of an employe without a hearing is risky procedure, and its validity will depend upon the facts of each case.)

It has been urged that the Third Division lacks jurisdiction in the present case. It is true, as supporters of that contention argue, that Section 3, First (h) of the Railway Labor Act, which defines and limits the jurisdiction of the four divisions of the Board, does not expressly mention ice plant employes as coming within the jurisdiction of this Division. That section prescribes that the Third Division shall have jurisdiction "over disputes involving station, tower and telegraph employes, train dispatchers, maintenance-of-way men, clerical employes, freight handlers, express, station, and store employes, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employes. . . ."

Manifestly, jurisdiction under the Railway Labor Act is determined by craft and class, and not by the nature of the organization that represents the employes. Ice plant personnel are traditionally and customarily part of the approved craft and class that includes "clerical employes, freight handlers, express, station, and store employes" (see "Determination of Craft or Class of the National Mediation Board, Volume 1 (1934-1948), pages 430, 431 and 496-498) and Section 3, First (h) of the Railway Labor Act is sufficiently broad to include them within the jurisdiction of the Third Division.

We will assert jurisdiction over the instant dispute and sustain the claim. Any earnings received by Claimant during the claim period will be deducted in determining the amount of back pay to which he is entitled under part (b) of the claim.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August 1965.

CARRIER MEMBERS' DISSENT TO AWARD NO. 13804, DOCKET NO. CL-14888

The Majority, consisting of the Referee and the Labor Members, committed error in taking jurisdiction of the dispute involved in this Award.

The Claimant was employed as an "Oiler" and was engaged in such activity at the Ice Plant of the Carrier at Roseville, California. Oilers are not listed in Section 3, First (h) of the Railway Labor Act as being within the jurisdiction of the Third Division of the National Railroad Adjustment Board.

The Board derives its jurisdiction from a statute. It was established and exists by virtue of the Railway Labor Act with definite powers and duties, i.e., jurisdiction, which can be prescribed only by statutory authority.

> "The word 'jurisdiction' implies a court or tribunal with judicial power to hear and determine a cause, and such tribunal cannot exist except by authority of law. * * * Jurisdiction always emanates directly and immediately from law. * * * *" [50 Corpus Juris Secundum 1090, Courts, Section 28]

> "Jurisdiction, in the general sense, as applied to the subject matter of a suit at law or in equity, must be found in, and derived from, the law which organized the tribunal; * * * Whenever the attention of the court is called to the absence of a jurisdictional fact, it may, and should, refuse to exceed its powers. * * * *" [21 Corpus Juris Secundum 39]

The jurisdiction of the several Divisions of the National Railroad Adjustment Board is prescribed by Section 3, First (h) of the Railway Labor Act. That ice plant personnel are traditionally and customarily part of the approved craft and class that includes "clerical employes, freight handlers, express, station and store employes" for representation purposes as determined by the National Mediation Board does not vest the Third Division of the National Railroad Adjustment Board with jurisdiction over "Oilers." The National Mediation Board cannot limit, extend, or in any way determine the jurisdiction of the National Railroad Adjustment Board or any of its Divisions, whether it be through representation elections or any other medium. The power to change the jurisdiction of any Division of the National Railroad Adjustment Board is vested in Congress and nowhere else.

G. C. White
R. E. Black
P. C. Carter
D. S. Dugan
T. F. Strunck