

Award No. 14356

Docket No. CL-15414

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

EAST PORTLAND FREIGHT TERMINAL

STATEMENT OF CLAIM:

(a) The East Portland Freight Terminal Company violated the agreement extant when, on January 5, 1964, it dismissed Mr. R. G. Parsigian from service based on charges not proved and notwithstanding prohibitive procedural violations, and:

(b) The East Portland Freight Terminal Company shall now be required to restore Mr. R. G. Parsigian to service with all rights unimpaired and to compensate him for all wage loss suffered from January 5, 1964, until restored to service with all rights unimpaired.

OPINION OF BOARD: The controversy concerns Claimant's dismissal from service on January 4, 1964, for allegedly violating Rules 801 and 802 of Carrier's General Rules and Regulations during an admitted altercation with Carrier's Special Officer at approximately 1:25 A.M. on December 16, 1963.

The pertinent rules are as follows:

**"RULES AND REGULATIONS OF THE
TRANSPORTATION DEPARTMENT**

**Southern Pacific Company
Pacific Lines**

General Rules

B. Employees must be conversant with and obey the rules and instructions. If in doubt as to their meaning, they must apply to proper authority for an explanation.

General Regulations

801. Employees who are insubordinate, dishonest, immoral, quarrellsome, or otherwise vicious, will not be retained in the service.

802. Indifference in the performance of duties will not be condoned. Civil, gentlemanly deportment is required of all employees in their dealings with patrons, the public, their subordinates, and each other. Boisterous, profane, or vulgar language is forbidden. Employees must not enter into an altercation, but will report the facts to their immediate superior."

It is undisputed that on December 16, 1963, at approximately 1:25 A. M., Claimant was involved in an angry dispute with a special officer while both were on duty. However, no witnesses were present at the time of the incident. An investigation was thereafter held on due notice to Claimant of the charges against him and he was dismissed for his part in the altercation.

Procedural objections to the investigation arise out of the business structure of the East Portland Freight Terminal, which is an unincorporated joint facility owned by two Carriers. Employees contend that Claimant was improperly charged, tried and dismissed by officers of the Union Pacific Railroad Company who were not members of the "Terminal Board," which is solely responsible under the applicable Agreement between the parties for the disposition of disciplinary matters concerning Terminal employees. We find no prohibition against the procedure followed in the instant dispute and that the Terminal Board did in fact make the final decision in conformity with the controlling Agreement. A further objection based upon the alleged failure of the Terminal Board to notify Employees' General Chairman concerning the disposition of his appeal is without merit inasmuch as his duly authorized agent received proper and timely notice.

The Board finds no merit in the further contention of Employees that Claimant did not receive a fair and impartial trial. The notice of charges was sufficiently precise to apprise Claimant and his representatives of the nature of the offense charged. (Award 13684) There is no probative evidence that the investigation was so conducted as to prejudice any of the Claimant's contractual rights.

The record discloses that there were no witnesses to the altercation and the statements of the Claimant and the special officer as to what transpired are in conflict. Only the outcome of the physical encounter is actually known. The patent conflict in the evidence offered by the parties requires a determination of facts that is essential to the proper disposition of this dispute and this Board cannot settle such questions of disputed facts. Therefore, we have no alternative but to dismiss the claim. (Award 12789)

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 Employee 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 on the facts of record the Division is unable to determine whether Carrier violated the Agreement.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1966.

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