

Award No. 15456
Docket No. CL-16380

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don J. Harr, Referee

PARTIES TO DISPUTE:

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

THE TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6045) that:

1. Carrier's action in the dismissal of service of Mr. Hubert F. Duncan, Clerk, at Marshall, Texas, was unreasonable, arbitrary, capricious and unjust;
2. Mr. H. F. Duncan be restored to service with seniority, vacation, and all other rights unimpaired;
3. That Mr. H. F. Duncan's record be cleared of any and all charges that may have been placed against him with this case;
4. That Mr. H. F. Duncan be compensated for any loss in service he may have sustained from date of removal from service until he is restored to service of the Carrier.

OPINION OF BOARD: There is no question in this case but that the Claimant was guilty as charged. Claimant refused to testify on his own behalf at his hearing and in the criminal proceeding, wherein he was charged with theft of Carrier's materials, he entered a plea of nolo contendere.

The Employees contend that Carrier was arbitrary in filing criminal charges against Claimant, thereby causing the investigation to be held under duress.

Award 4749 (Carter) states:

"Assuming that the Carrier instigated the arrests, the argument is not sound. A prosecution under the criminal law has no effect upon the contractual liabilities of the parties. It is altogether different from a situation where a party has an election of civil remedies, and after pursuing one, attempts to pursue the other."

We believe that the pendency of the criminal charges had no effect upon Claimant's rights under the agreement.

The Employes further protested the handling of the case due to failure of Carrier to properly follow Rule 21 (b) of the agreement. Rule 21 (b) reads, in part:

"The right of appeal by employes or their duly accredited representatives in the regular order of succession up to and including the highest official designated by the Railway is hereby recognized."

From a review of the record we find that Claimant was provided a fair and impartial hearing and was granted every right he was entitled to under the agreement. Claimant has not been deprived of due process of law.

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 not violated.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 31st day of March 1967.