

Award No. 16341
Docket No. CL-17124

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

PACIFIC FRUIT EXPRESS COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6344) that:

(a) The Pacific Fruit Express Company violated the current Agreement between the parties at Bakersfield, California, when on September 24, 1966, it suspended employees J. H. Hernandez and A. S. Vasquez from service for the period October 1, 1966 to March 31, 1967, pursuant to formal investigation at which the stated charges were not proved; and,

(b) The Pacific Fruit Express Company shall now be required to reimburse each of the above named claimants for all expenses incurred during the suspension period which would otherwise have been borne by the Company; to reimburse them for all travel expenses necessary in other employment during said period; and to allow them all wage loss suffered during the period held out of service.

OPINION OF BOARD: The Claimants herein were involved in the same occurrence that took place on August 13, 1966, at Carrier's Bakersfield Ice Plant as in Award 16340, except in the present case, in citing the Claimants to appear at a formal investigation and hearing, the citation in each instance read, in part:

"You are hereby notified to be present at the office of PFE Plant Manager, Bakersfield, California, at 10:00 A.M., September 1, 1966 for formal investigation in connection with your alleged non-attendance to and non-performance of duty when you were observed sleeping on the job at approximately 4:00 A.M., August 13, 1966 at the PFE Bakersfield Ice Plant, for which occurrence you are hereby charged with responsibility which may involve violation of PFE Company General Rule J, which reads as follows:

"We must devote ourselves exclusively to our duties during working hours; inattention to or non-performance of duties cannot be permitted."

Following the hearing that was conducted on September 16, 1966, the Claimants herein were assessed discipline of suspension from service of Carrier until March 31, 1967.

In its submission to the Board the Petitioner alleges that "the stated charges were not proved", which was also the only allegation made in the handling of the dispute on the property. In its submission to the Board the Petitioner alleges, for the first time, that Claimants' procedural rights were violated in the manner in which the investigation was conducted and the appeal handled, but such contentions, not having been made in the handling of the dispute on the property, cannot be considered by the Board.

A review of the transcript of the hearing shows that there was substantial probative evidence to support the charges against the Claimants. The fact that the evidence against the Claimants was furnished through the testimony of a patrolman and a special agent does not detract from it.

We find no basis for disturbing the action of the Carrier, and will deny 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 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1968.