

Award Number 17565

Docket Number CL-18253

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

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

FRUIT GROWERS EXPRESS COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6625) that:

- (1) The Company wrongfully dismissed Icing Foreman-Inspector Sterling E. Hodge from service on February 9, 1968, and
- (2) That Sterling E. Hodge be restored to active service with seniority rights unimpaired and that he now be compensated for all time lost as a result of the Company's action.

OPINION OF BOARD: Claimant was required to attend a hearing on February 1, 1968 on a charge that he was observed entering the body of a loaded trailer in the B&OCT Yard at Robey Street, Chicago, on Friday evening January 26, 1968.

On February 5, 1968 Claimant was required to attend a hearing on a charge of unauthorized possession of three Company-owned Liquid Fuel Heaters.

As to the first hearing it is the contention of Petitioner that the Carrier failed to substantiate the charge of entering the body of a loaded trailer and that all that was developed was that Claimant had broken the seal on the trailer, opened the door and immediately closed it.

Concerning the second hearing the Petitioner acknowledges that the investigation does support the charge and that Claimant freely admitted to removing the heaters to his personal garage for the purpose of supplying heat when doing repair work on his automobile.

Petitioner's admission that the record in the second hearing substantiates the charge makes it unnecessary for the Board to pass upon the question of whether Carrier substantiated the charge in the first hearing.

Petitioner's entire case hinges upon the contention that dismissal from service is excessive discipline for unauthorized possession of Company-owned equipment. With this we do not agree. We cannot find that dismissal from service is excessive discipline for such action and find no basis in the record for reversing the Carrier's decision. The claim will be denied.

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1969.