

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19489  
Docket Number CL-19512

Joseph E. Cole, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Pacific Fruit Express Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7051)  
that:

(a) The Pacific Fruit Express Company violated the current Clerks' Agreement when on June 15, 1971 it suspended employee Robert F. Garcia from service for thirty (30) work days from June 19, 1971 through July 28, 1971 inclusive; and,

(b) The Pacific Fruit Express Company shall now be required to compensate Mr. Garcia for each work days' wages lost during such suspension at the pro rata rate of his position, Relief A, including holiday allowance; and,

(c) The Pacific Fruit Express Company shall be required to make premium payments on behalf of Mr. Garcia in appropriate amounts required under Health and Welfare provisions of the current Clerks' Agreement, for all benefits described in the contract.

OPINION OF BOARD: 1. A timely formal investigation was held in a fair and impartial manner.

2. Claimant was advised of the charges against him.

3. The proper officer conducted the investigation and imposed discipline on the claimant.

4. The investigative hearing was fair and impartial and the decision and imposition of the discipline was not arbitrary and capricious.

5. Referee Paul Dugan in 16189 states the position of the Board when the award said "...our function in discipline cases is not to substitute our judgment for the company or decide the matter in accord with what we might or might not have done had it been ours to determine, but to pass upon the question whether, without weighing it, there is some substantial evidence to sustain a finding of guilty."

6. In this instance there was substantial evidence to sustain a finding of guilty against the Claimant.

7. Again in Referee Dugan's Award 16189 the award reads "In regard to the penalty assessed in the case, the record clearly shows that the action of the Carrier with respect thereto was not so unjust, unreasonable, or arbitrary so as to constitute an abuse of Carrier's discretion in imposing said penalty for said violation." The same is true in the current claim and the Board adopts this language.

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:

*E. A. T. Gillen*  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1972.