

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21624
Docket Number CL-21805

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Fruit Growers Express Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8192) that:

(a) The Company violated the Rules Agreement (effective April 1, 1943 as revised February 22, 1973) especially Rules 50, 51, 52, 53, 54, 55, 56, 57 and 58, when it assessed discipline of dismissal on employees J. S. Baker, J. G. Dumasius and W. D. Sysak at Detroit, Michigan on December 23, 1975.

(b) Claimants Baker, Dumasius and Sysak's records should be cleared of the charges brought against them on December 23, 1975.

(c) Claimants Baker, Dumasius and Sysak be restored to service with all seniority rights unimpaired and be compensated for all time lost during the period they were held out of service.

OPINION OF BOARD: As the result of an occurrence at the N&W T.O.F.C. facility on January 4, 1975, each of the three (3) named claimants was charged in the United States District Court, Eastern District of Michigan with:

"Theft from Interstate Shipment under \$100.00
in violation of Title 18 U.S.C. Section 659."

Each claimant entered a plea of nolo contendere to the charge. The Court ruled in each case that the sentence as to imprisonment be suspended; that the defendant(s) be placed on probation for two (2) years; that each make restitution in the amount of \$60.00 and that each pay a fine of \$150.00.

Thereafter, each of the claimants was instructed by Carrier to appear for a hearing on the charge:

- "(1) The events surrounding your involvement in the theft from an Interstate Shipment at the N&W T.O.F.C. facility at Detroit, Michigan, approximately 4:30 P.M., January 4, 1975:
- "(2) Subsequent federal indictment returned by the Grand Jury filed in the U. S. District Court - Eastern District of Michigan:
- "(3) Enter of plea of guilty to the charge of theft from Interstate Shipment under \$100.00 in violation of Title 18 U.S.C. Section 659."

At the time of the occurrence in question, Claimants Baker, Dumasius and Sysak had been employes of the Carrier for approximately 13, 7 and 16 months respectively.

An examination of the hearing record reveals that there is sufficient evidence to support the charge as made. As can be seen from the record, the charges stem directly from the action which was taken against the claimants in the U. S. District Court. Petitioner contends that the nolo contendere plea as entered by claimants in this case was not admission of guilt, per se. In these circumstances, we do not agree. The definition of nolo contendere as found in Black's Law Dictionary is:

"NOLO CONTENDERE. Lat. I will not contest it. The name of a plea in a criminal action, having the same legal effect as a plea of guilty, so far as regards all proceedings on the indictment, and on which the defendant may be sentenced. U. S. v. Hartwell, 3 Cliff. 221, F. Cas. No. 15,318."

From this plea, a guilty verdict was entered and sentence passed accordingly. There is nothing in the record to indicate that this definition of nolo contendere had any meaning other than "the same legal effect as a plea of guilty."

Pilferage from property entrusted to railroads for shipment is the bane of the transportation industry. The impact of distrust on this mode of transport is severely detrimental to both employes whose livelihood is derived from the patronage of shippers, as well as their employers. The seriousness of such actions cannot be minimized. In view of the seriousness of the occurrence and the relatively short employment of

the claimants, the discipline as assessed was not excessive or capricious. There are no mitigating circumstances present in this case to warrant questioning the discipline imposed upon the claimants. The Board will not substitute its judgment for that of the Carrier in this matter.

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:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1977.