

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22908

Docket Number MW-22922

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Missouri Pacific Railroad Company
((formerly Chicago & Eastern Illinois Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Machine Operator G. J. Hernandez was improper and without just and sufficient cause [System File S 214-91].

(2) The claimant shall be reinstated as machine operator with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant entered Carrier's service October 24, 1969. At the time of the occurrence giving rise to the dispute herein he was assigned as machine operator with Gang No. 8723. The members of the gang were staying at the Hotel Central in Villa Grove, Illinois. On December 27, 1977, he was notified to report for formal investigation to be held on January 5, 1978:

".....to develop the facts and place your responsibility, if any, in connection with the charges that you were absent without proper authority from your assigned position of Machine Operator on Gang No. 8723, Headquarters Villa Grove, Illinois, on December 6, 7, 8, and 9, 1977, and conduct unbecoming an employee in connection with your entering Missouri Pacific Depot, Villa Grove, Illinois, in a disorderly manner, and destroying company property at about 12:05 A.M. December 6, 1977, entering into an altercation with your Foreman B. Berg at approximately 12:15 A.M., December 6, 1977, assault and battering of Effie Jorgensen, Owner of Hotel Central, at approximately 12:15 A.M. December 6, 1977, which action resulted in your being arrested at Villa Grove, Illinois, at approximately 12:30 A.M. December 6, 1977 and being held by the Douglas County Authorities."

The investigation was conducted on January 9, 1978. The claimant was present throughout the investigation and was represented by the General Chairman of the Organization. A copy of the transcript of the investigation has been made a part of the record. A review of the transcript shows that none of claimant's substantive procedural rights was violated in the manner in which the investigation was conducted.

Without detailing all the evidence adduced at the investigation, suffice it to say that there was substantial evidence in support of all the charges. The claimant's primary response was that he "had no knowledge" of the occurrences.

Based on the record, the Board concludes that claimant was guilty of conduct that simply cannot be condoned, and the Carrier was fully justified in dismissing him from service.

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 Employee involved in this dispute are respectively Carrier and Employee 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:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of July 1980.