

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(Pacific Fruit Express Company

STATEMENT OF CLAIM:

1. That the Pacific Fruit Express Company violated the controlling agreement, particularly Rules 19, 20, 21 and 37, when Carman J. L. Silverman was recalled to service on January 14, 1987, but was not permitted to begin work until February 17, 1987.

2. That accordingly, the Pacific Fruit Express Company be ordered to compensate Carman Silverman for all work days lost beginning on the date of January 14, 1987 to February 17, 1987, Tucson, Arizona.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The facts in this Claim are almost identical to those involved in our Award 11827. As was the case in that Award Claimant did not sign his medical form at the time he participated in a return to duty physical examination. On the date his properly completed paperwork was received by Carrier's Chief Medical Officer, February 11, 1987, he was advised by phone that he could return to duty. Claimant, however advised Carrier that he needed an additional five days time before reporting. He reported on February 17, 1987.

Even if a showing had been made, by Petitioner, that Carrier was dilatory in effecting Claimant's recall, there is no showing in this record that he would have been able to report for duty any earlier than the date he reported. Accordingly, in the circumstances of this record we do not find that Carrier was dilatory or that the Agreement was violated. The Claim will be denied.


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Award No. 11836
Docket No. 11674
90-2-88-2-183

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of March 1990.