

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20678
Docket Number **CL-20708**

William M. Edgett, 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-7612) that:

1. The Pacific Fruit Express Company violated the Agreement on November 15, 1972, when it notified J. H. Trujillo that he was automatically considered out of service because of the unsatisfactory nature of the reason he advanced for not wishing to respond to the employer's recall notice.

2. J. H. Trujillo shall now be allowed eight (8) hours pay each work day at the pro rata rate of **Iceman commencing** November 15, 1972, and continuing until his seniority rights are properly restored.

OPINION OF BOARD: On October 4, 1972, Carrier sent Claimant a proper "Notice of Recall to Duty", Claimant being the senior furloughed, unassigned employee on the seniority district. Claimant failed to report for duty, and as a reason for doing so he stated that he wanted to remain with his family.

On November 15, 1972, Carrier's Superintendent advised Claimant that under the provisions of **Rule 13 (d)** of the controlling agreement he was automatically considered out of service because of his failure to report and the unsatisfactory nature of his reason for doing so. **Rule 13 (d)**, then in effect, reads:

"**13(d)** An **employee** failing to return to service on a regular or bulletined position for which he has requisite seniority and is qualified, within fifteen (15) days after being notified (by certified mail or telegram sent to last address furnished by **employee**) or give satisfactory reason for not doing so will be considered out of service."

Since Claimant neither returned to **service** nor offered satisfactory reason for his failure to do so, he terminated his seniority rights under the **provisions** of **Rule 13 (d)**. Awards 5799 (Carter), 10404 (Mitchell), 12993 (Hall), 20672 (Edgett).

Award Number 20678
Docket Number CL-20708

Page 2

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:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 17th day of April 1975.