

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award limber 20863
Docket Number CL-20929

Irwin M. Lieberman, 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-7733**) that :

(a) The Pacific Fruit Express Company violated the current Clerks' Agreement on March **12, 1973** when it notified Mr. J. **N. Kibler** that he was out of service due to **his** failure to report for duty or give satisfactory reason in writing **for** not doing so pursuant to **Notice of Recall to Duty issued** under provision 8 of Rule 13 (d); and,

(b) The Pacific **Fruit Express** Company shall now be required to reinstate Mr. J. **N. Kibler** and **compensate him** for eight (8) hours at the applicable pro-rata rate of \$39.17 per day beginning March 13, **1973** and continuing until he is reinstated.

OPINION OF BOARD: Claimant, while on the extra list at **Colton**, California, was the senior qualified furloughed unassigned **employee** in February **1973**. On February 22, 1973 Claimant received a notice dated February 20, **1973** from Carrier's Agent at **Yuma**, Arizona which formally recalled him to duty within his seniority **district**. The recall letter **purported** to quote certain provisions of Rule 13. Claimant did not **report** for duty. On March **12, 1973** Carrier's Agent at **Yuma** directed a letter to Claimant, which was delivered on March **15th**, which informed Claimant that he had **failed** to report **for** duty or give **satisfactory reasons therefor and for that reason he was no longer in service and considered resigned**. On March **14, 1973**, Carrier's Agent-Clerk at **Colton**, California received a letter **from** Claimant dated March 7, 1973 stating: "**Sorry** could not take the **Yuma** job on account **special reasons. Will** report on the 13th. Thank you."

Rule 13 (d) provides:

"Rule 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**) day⁸ after being notified (by Certified mail or telegram **sent to** last address furnished by employee) or give **satisfactory reason in writing for NOT doing so will**

"be considered **resigned** and **will** be so notified in writing, but he shall not be entitled to an investigation under Rule **38** in connection with such **termination of employee relationship**. If the **employee's reason** for not returning to **service** is deemed to be **unsatisfactory** by the **Company**, the **Company will promptly so advise** the employee by U.S. Certified Mail, after which the date on which the employee has to return to service will be either the fifth (5th) **calendar day following** date of receipt of the Company's notice rejecting his reason or the **fifteenth** (15th) day after receipt of the Company's original **recall** letter, whichever is later; **should** receipt of the **Company's** rejection of reason letter be avoided or refused, the date for return to service **shall** in my **such case** be the fifteenth (15th) day after receipt of **original recall** letter. In the event the Company **fails to** notify the **employee** to the contrary, the reason advanced for not returning to service **shall be considered satisfactory.**"

Petitioner contends that **Claimant** responded properly to **his Supervisor**, the Agent-Clerk **in Colton**, in compliance with Rule **13** (d). **Based on** the last **sentence** of that role, **supra**, the Organization argues that the Carrier is required to reinstate **Claimant** since it **failed to notify him** that his reason for not returning to service **was unsatisfactory**. **Petitioner** also states that the original notice of recall **only** quoted part of Rule **13 (d)** and misquoted that portion as well.

Carrier argues that Claimant's letter was sent to a **fellow** clerk, the Agent **at Colton**, who had no authority in connection with the **Yuma** operation and had nothing to do with the recall; Claimant **never** responded to the Agent at **Yuma**. It is also argued that the letter was **late**, long after the fifteen day time limit, **and** did not contain **any** reason for his **failure** to report.

Without considering the issue of the proper addressee for Claimant's letter, the dispute **herein** first rests on the question of rule **time** limits. There **is** unrefuted evidence **in** the record herein that Claimant's letter was received by the Agent-Clerk **in Colton** on March 14, 1973, **some** twenty days after he received the recall notice. Rule **13 (d)** is self-operating and provides that **failure** to respond **in** timely fashion **results in an employee being** considered resigned. We have recently considered a related dispute, **involving** these parties, Award **20678**, and **found** in that dispute al.80 that seniority rights were terminated **under** the **provisions** of Rule **13 (d)**.

We do not deem it necessary to deal with the other issues raised in this dispute, since the record clearly demonstrates that Claimant did not abide by the time limit provisions of the applicable rule. The Claim must be denied.

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. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of November 1975.