

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20864
Docket Number CL-20930

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
(CL-7734) that:

(a) The Pacific Fruit Express Company violated the Agreement on November 16, 1972 when it notified Mrs. D. L. Briggs that she was automatically considered out of service because of the unsatisfactory nature of the reason she gave for not returning to service on position of Relief Clerk at the Nampa District Agency, Nampa, Idaho, and,

(b) The Pacific Fruit Express Company shall now be required to restore Mrs. D. L. Briggs to service with seniority and all other rights unimpaired.

OPINION OF BOARD: On August 24, 1972 Carrier addressed a Notice of Recall to Duty to Claimant notifying her to report for duty, quoting Rule 13 (d). On September 1, 1972 Claimant wrote to Carrier refusing to accept the position stating that she was not qualified for the work. On November 16, 1972 Carrier wrote to Claimant advising her that she was "...automatically considered out of service because of the unsatisfactory nature of the reason advanced....The Company is the sole judge of qualifications of all employees for positions." On November 26, 1972 the Local Chairman filed the Claim with the Superintendent to which reply was made rejecting the Claim on January 26, 1973. Appeal was taken to the next higher step, the Manager of Personnel, by letter dated May 11, 1973 from the Local Chairman. Carrier's final declination was dated September 21, 1973. There were several conferences and an agreement dated June 29, 1973 which extended the time limits. Rule 13 (d) provides:

"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."

On the property the Carrier alleged that Petitioner failed to adhere to the time limits prescribed in the Agreement on two separate counts : 1. The **Claim** filed on November 26, 1972 was filed some **79** days after the occurrence whereas the rule provides a 60 day period; 2. The Claim was declined by the local Superintendent on January 26, 1973 **but** was not appealed to the next level until May 11, **1973**, 105 days later rather than the prescribed 60 days.

With respect to the first objection to the late **filing** by the Organization alleged by Carrier, It is noted that until Claimant received Carrier's letter dated November 16, **1972** there was no basis for any Claim and indeed there was no reason to believe that the reasons given by Claimant, under Rule **13** (d), had not been considered satisfactory. Hence we find that Carrier's argument on this point is without merit. The hiatus of 105 days between January 26, 1973 and May **11**, 1973 is quite another matter in **view** of the 60 day period **for** appeal as provided in the Agreement. We find nothing in the agreement signed June **29**, **1973** indicating its **retroactive** application and Carrier did not waive its defense on this point at **any** time.

Under the circumstances herein the Claim was not appealed within the time limits established by the Agreement and we are barred from consideration of the merits of the dispute. The Claim must be dismissed.

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 Claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Pauls*
Executive Secretary

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