

NATIONAL ~~RAILROAD~~ ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21042  
Docket Number CL-21036

Joseph A. Sickles, 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-7812) that:

(a) The Pacific Fruit Express Company violated the Clerks' Agreement when it removed Mt. L. F. Nunez from service; and

(b) The Pacific Fruit Express Company shall now be required to reinstate Mr. **L. F.** Nunez to service with seniority and all other rights unimpaired.

OPINION OF BOARD: Claimant was a furloughed protected **employee** at **Yuma, Arizona.** On June 12, 1972, he was notified to report for duty as an **Iceman** at Tucson, Arizona; which notice also cited the pertinent portion of Rule 13 which advises that **employees** with requisite seniority and qualification who fail to return to service on a regular or bulletined position within fifteen (15) days (or give satisfactory reason for not doing so) will be considered out of service.

Claimant declined to report, as follows:

"I am sorry I can't go to Tucson, **Ariz.** do to the fact that I **am** buying a house and what I earn goes to paying of the house. I can't afford to pay room and board and pay for the house too. And to top it all my sister has a broken **ankel** and my brother in law just got out of the hospital and they stay at home with me.

I am working right now and I make a call now and then for P.F.E. when I have the time. And I haven't that much of a **guranteed** from P.F.E. and if I have to go to Tucson for a month or a month and half when I get back **I'll** be out of a job so **I'll** be unemployed."

Carrier refused to accept Claimant's reasons.

**On** the property, Claimant defended his refusal to report because he was not notified in a manner prescribed by the October 15, 1969 **Memorandum** Agreement, which states that notices as contemplated therein are not considered as "recalls" under Rule 13.

Carrier denied that the October 15, 1969 Memorandum Agreement was applicable to this dispute, but rather, restated its contention that Rule 13 required it to issue the recall notice and that Claimant failed to comply with that rule.

In its Submission to this Board, Claimant urges that his reason for not reporting to the **Iceman** position at Tucson was satisfactory and that Carrier's interpretation was unconscionable and arrogant, and repeated the assertion that the 1969 Memorandum controlled.

We do not find that Claimant raised the "sufficiency of reason" assertion on the property, and thus, he is precluded from doing so at this level. In any event, Award 20678 is pertinent to the type of reason asserted by Claimant for his failure to report.

As we view this dispute, the Claimant's rights and corresponding obligations were dictated by Rule 13 of the Agreement, and that rule does not permit exceptions based upon distances involved. Claimant had the requisite seniority and qualification to be returned to service, and he failed to do so. Whatever the applicability of the 1969 Memorandum of Agreement, it would not appear to be controlling here. We have noted, as stressed by Carrier, that the 1969 Memorandum was not asserted as a basis for relief in Awards 20678 and 20863. While **that** factor is not necessarily controlling, it **is** certainly persuasive.

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 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:

  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1976.