

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21943
Docket Number CL-21818

Don Hamilton, 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-8299, that :

Claim No. 1

(a) The Pacific Fruit Express **Company** violated **Rule 38(f)** of
the Clerks' Agreement extant when it failed and refused to grant **employee**
Stanley **Schmidt** an investigation duly requested thereunder; and,

(b) The Pacific Fruit Express **Company** shall now be required
to **allow Stanley Schmidt** the investigation he requested.

Claim No. 2

(a) The Pacific Fruit Express **Company** violated **Rules 7, 9,**
15, 18, 19 and 20 of the **Clerks' Agreement** extant when it failed to
assign Stanley Schmidt to Position J-32 and, instead, assigned junior
employee L. San Miguel thereto.

(b) The Pacific Fruit Express **Company** shall now be required
to assign Stanley **Schmidt** to Position J-32 and allow him eight (8)
hours' additional **compensation** at \$41.57 per day, plus \$7.50 per day
mileage allowance, beginning **June 4, 1975** and continuing each day
thereafter until assigned thereto.

OPINION OF BOARD: The Claimant made application for a position that
was subsequently awarded to an applicant with less
seniority.

A request for an investigation based on unjust treatment was
made to the Carrier. The same was denied.

Claim No. 1 requests that the Carrier be required to conduct the investigation as requested. **The** rules provide for such an investigation and the Carrier has failed to advance any legal reason why the investigation should **not** be conducted. Therefore, the Carrier is directed to conduct said investigation at the earliest possible **time**.

Claim No. 2 requests that the Carrier be required to assign the **Claimant** to the position he has been denied and award **him** the compensation of said position **from** June 4, 1975, until said **assignment**.

There is no evidence of record or theory of law advanced which would permit this Board to grant such relief. **Claim** No. 2 is 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;

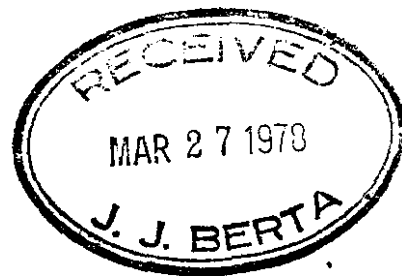
That this Division of the **Adjustment** Board has jurisdiction over the dispute involved herein; and

That the **Agreement** was violated.

A W A R D

Claim No. 1 sustained.

Claim No. 2 denied.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen

Dated at Chicago, Illinois, this 15th day of March 1978.