

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20863  
Docket Number CL-20929

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship  
( Clerks, Freight Handlers, Express and  
( Station Employees  
(  
(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 provisions 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 employe 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 employe) 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 any such case be the fifteenth (15th) day after receipt of original recall letter. In the event the Company fails to so 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 rule, 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 also 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. Pauls  
Executive Secretary

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