

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21943  
Docket Number CL-21818

Don Hamilton, 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-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 employe 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 employe 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;

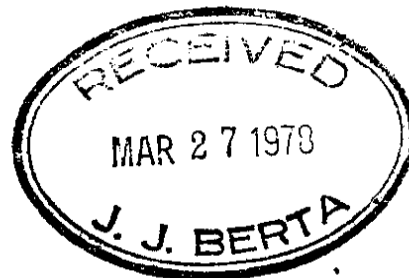
That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

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.