NATIONAL RAILWAY LABOR CONFERENCE

1225 CONNECTICUT AVENUE, N.W., WASHINGTON, D. C. 20036/AREA CODE: 202-659-9320

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March 19, 1976

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Gentlemen:

There are attached copies of Award Nos. 396 and 397, dated March 19, 1976, rendered by Special Board of Adjustment No. 605 established by Article VII of the February 7, 1965 National Agreement.

Yours very truly,

J. F. Griffin

cc: Chairman - Employes' National
Conference Committee (10)
Messrs.
C. L. Dennis (2)
E. J. Neal (3)
S. G. Bishop (4)
C. J. Chamberlain (2)
H. C. Crotty (2)
R. W. Smith (2)
M. B. Frye (2)
W. W. Altus (2)
J. J. Berta (2)
Lester Schoene Esquire (2)
R. K. Quinn, Jr. (3)
W. F. Euker
T. F. Strunck

AWARD NO. 396
Case No. CL-103-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE: Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes and Pacific Fruit Express Company

QUESTION AT ISSUE: Did the Pacific Fruit Express Company violate the National Agreement of February 7, 1965 when it ordered protected employes J. W. Martinez and P. Martinez, El Paso, Texas, to report at once for duty on positions of Laborer at Tucson, Arizona, another seniority district, by authority of Agreement between the parties dated October 31, 1973 respecting phased closing and discontinuance of its icing operations, notwithstanding the National Agreement of February 7, 1965, Article III, Sections 1 and 2 thereof, provides for specific implementing agreements requiring sixty or ninety days written notice to the involved organization?

OPINION OF BOARD: On March 4, 1974, Claimants J. W. Martinez and P. Martinez were protected employees in Seniority District 10, at El Paso, Texas. On that date, the Carrier notified Claimants to report for duty in Tucson, Arizona--another seniority district where Claimants did not have seniority rights. Despite such lack, Claimants were directed to report to Tucson, "for a position for which you are qualified in your craft and/or class." Consequently, the Organization filed the instant Claim alleging a violation of the February 7, 1965 National Agreement.

In order to place in proper focus the thrust of the instant dispute, it is essential that we quote the relevant sections of the National Agreement, to wit:

"Article II, Section 2

An employee shall cease to be a protected employee in the event of his failure to accept employment in his craft offered to him by the carrier in any seniority district or on any seniority roster throughout the carrier's railroad system as provided in implementing agreements made pursuant to Article III hereof, ----."

"Article III, Section 2

Except as provided in Section 3 hereof, the carrier shall give at least 60 days' (90 days in cases that will require a change of an employee's residence) written notice to the organization involved of any

intended change or changes referred to in Section 1 of this Article whenever such intended change or changes are of such a nature as to require an implementing agreement as provided in said Section 1."

In addition, the November 24, 1965 Interpretations to the February 7, 1965 National Agreement, provides as follows, to wit:

"Article III - Implementing Agreements

The parties to the Agreement of February 7, 1965, being not in accord as to the meaning and intent of Article III, Section 1, of that Agreement, have agreed on the following compromise interpretation to govern its application:

1. Implementing agreements will be required in the following situations:

(a) Whenever the proposed change involves the transfer of employes from one seniority district or roster to another, as such seniority districts or rosters existed on February 7, 1965."

Thus, the Organization argues that the Carrier violated the National Agreement when, "Claimants were ordered to report for work in Seniority District 4 where they do not have seniority rights." (Underline included in original submission).

We agree wholeheartedly with the Organization's contention that it would be a violation of the National Agreement; and impermissible to transfer employees to another seniority district where they have not established seniority rights, without an implementing agreement. Our assertion of the foregoing basic principle leads us directly to the fundamental arguments of the parties.

On October 31, 1973, the parties executed an Agreement, portions of which are hereinafter quoted, to wit:

"This implementing agreement, entered into as a result of ICC Order (Docket No. 8720) on discontinuance of icing service, is made by and between the Pacific Fruit Express Company (hereinafter referred to as the Company) and certain of its employes represented by the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes (hereinafter referred to as the Organization).

It is Agreed:

The Company's remaining ice plants, icing platforms, other icing operations and facilities located at various points on its system will as result of above mentioned ICC Order be subject to phased closing and discontinuance. The fundamental purpose of this agreement is to provide orderly procedures for the accomplishment of such changes in positions and conditions of employment for employes within the coverage of existing agreements between the parties and to set forth benefits applicable to employes who are affected by changes resulting from said closures, curtailments and/or discontinuances of ice plants, icing platforms, icing operations and facilities.

Article I

Applicability

The provisions of this implementing agreement shall be applied to employes, subject to the provisions of the Clerks' Agreement effective June 1, 1965, as amended, who are affected by changes brought about by the phaseout of aforesaid icing operations at various points on the Company's system."

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"Article III

Compensation Due Protected Employes

All employes protected under the provisions of the February 7, 1965 Agreement who are affected----shall continue to be governed by and subject to the provisions of the February 7, 1965 Agreement."

In this posture, the Organization alleges that, "(N) or was a change in icing operations involved." Furthermore, that the parties did not enter into an implementing agreement. In addition, we would note that subsequent to the execution of the October 31, 1973 Agreement, as well as the letters to Claimants to report for duty in Tucson, one of the Claimants, J. W. Martinez, opted for severance and was paid $14,001.41.

Hence, the issue presented to our Board poses the question, whether the October 31, 1973 Agreement, represented an implementing agreement as required by the February 7, 1965 National Agreement. The Carrier's response states as follows:

"The Agreement itself is replete with Implementing Agreement references as well as February 7, 1965 references."

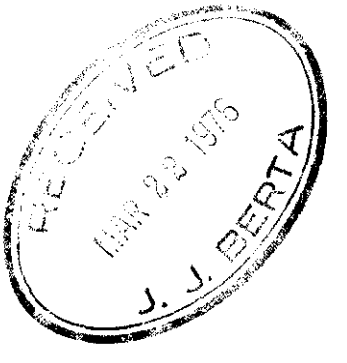
What disturbs us is the apparent attempt on the part of the Organization to recant, abjure and repudiate the unambiguous language contained in the October 31, 1973 Agreement. It seeks now to have us disregard such words as "implementing agreement" and "subject to the provisions of the February 7, 1965 Agreement." In our view, the October 31, 1973 Agreement, is clearly and unequivocably an implementing agreement within the purview of the February 7, 1965 National Agreement. We consider such effort as an argument in futility.

Therefore, it is our considered judgment that the instant Claim should be denied.

AWARD:

The answer to the question is in the negative.

Murray M. Rohman
Neutral Member



Dated: Washington, D. C.
March 19, 1976