

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: (The Brotherhood Railway Carmen of the United States and Canada
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated the controlling agreement when they unjustly suspended Carmen J. J. Johnson and J. M. Sneed from the service of the Company for five (5) days, June 17 through June 21, 1979.
2. That the Seaboard Coast Line Railroad Company violated Rules 30 and 32 of the controlling agreement in this case, and these violations which are procedural defects are listed below:
 - (a) Carmen Johnson and Sneed were not apprised in writing of the precise charge against them.
 - (b) Carmen Johnson and Sneed did not receive a fair hearing due to Superintendent W. E. Satterwhite's placing the charges against them and then disciplining them for allegedly being guilty of the charges that he had placed against them.
 - (c) This claim and grievance should have been paid by the Seaboard Coast Line Railroad Company since they were in violation of Rule 30, 1 (a) when Mr. Satterwhite did not notify Local Chairman W. H. Woods within the 60 days called for in the rule that he was disallowing the claim.
3. That accordingly, the Seaboard Coast Line Railroad Company be ordered to compensate Carmen Johnson and Sneed for eight (8) hours each day lost due to their suspension from June 17 through 21, 1979, at pro rata rate of pay, all overtime they would have made had they been allowed to remain in service, and all other benefits that would have accrued to their positions, and that their personal record file will be cleared of these unjust charges and discipline.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On May 22, 1979, the Carrier convened an investigation to determine if Claimants, Car Inspectors at Savannah, Georgia, were responsible for a timetable violation. Following the hearing, the Carrier suspended both Claimants from service for five days beginning on June 17, 1979 for allegedly failing to properly place a locomotive crane in Train No. 110. The Local Chairman initiated a claim appealing the discipline assessed against both Claimants on July 31, 1979. Receiving no reply, the Local Chairman wrote to the Carrier's Superintendent at Savannah on October 13, 1979 and urged the Superintendent to allow the claim in accord with Rule 30, Section 1(a). The Superintendent immediately dispatched a letter to the Local Chairman in which he emphatically asserted that he had denied the original claim in writing by letter dated September 7, 1979. After reiterating that he had never received a denial of the July 31, 1979 claim, the Local Chairman eventually received the Superintendent's September 7, 1979 correspondence on December 7, 1979. The Superintendent's denial had been sent by Company mail. The date the Local Chairman actually received the letter was corroborated by three witnesses.

Rule 30, Section 1(a) provides in pertinent part:

"Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the carrier as to other similar claims or grievances." (Emphasis added.)

Therefore, the issue presented to this Board is whether or not the Carrier timely notified the Local Chairman, in writing, that the Carrier was disallowing the Organization's July 31, 1979 claim within the sixty-day limitation period set forth in Rule 30, Section 1(a). The Carrier contends that it timely declined the claim on or about September 7, 1979. However, the most objective evidence in the record clearly discloses that the Local Chairman did not receive the Superintendent's rejection until early December, 1979. The burden of proof rests squarely with the sender of correspondence to demonstrate that the writing was conveyed within the applicable time limitations. Second Division Award Nos. 8089 and 4851; and Third Division Award No. 14354. The sender, not the recipient, of a correspondence selects the mode of communication. The Superintendent chose to utilize Company mail for sending his denial letter. Under the clear and unambiguous terms of Rule 30, Section 1(a), the Carrier must bear the responsibility for the unreliable mail system since the Local Chairman was not notified that the Carrier was denying the claim within the time limit.

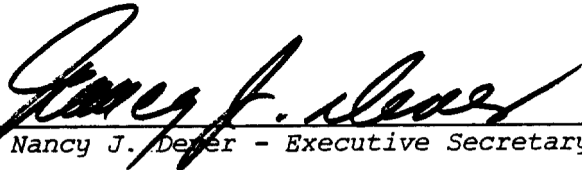
Thus, we must sustain this claim. The Carrier shall pay each Claimant five days of back pay at the straight time rate in effect when they served their suspensions and the disciplinary mark should be removed from their records. The portion of the claim requesting overtime compensation is denied. Though we are sustaining this claim, we do so without addressing or considering the underlying merits of this case.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: _____


Nancy J. Defer - Executive Secretary

Dated at Chicago, Illinois this 5th day of December 1984.