

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: ( (Sheet Metal Workers International Association  
(Southern Pacific Transportation Company

Dispute: Claim of Employees:

1) That the Carrier violated Rule 77 of the current controlling Motive Power and Car Department Agreement and the historical practice on July 8, 11, 1983.

2) That the Carrier also violated Rule 38 of the current Agreement when the appeal of the General Chairman was not disallowed within 60 day time limit.

3) That the Carrier compensate claimant for 10 hours pay at straight time rate plus interest at the rate of 10% per annum.

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 July 8 and 11, 1983, the Carrier assigned Boilermakers to weld sixteen (16) gauge stainless steel sheeting on a rotary snow plow. The Organization filed a Claim on Claimant's behalf for ten hours' pay at the applicable straight-time rate of pay, plus interest at the rate of 10 percent per year.

The Organization contends that the Carrier failed to disallow the General Chairman's appeal within the sixty-day time limit established in Rule 38 of the Agreement, which provides:

"Should any such claim or grievance be disallowed, the Carrier shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative), in writing, of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented . . . ."

The Organization asserts that the Carrier undoubtedly received the appeal in advance of the time limit; the Claim was properly addressed and mailed twenty-six (26) days before the end of the sixty-day appeal period, and the Postal Service has never returned it to the Organization.

The Organization also contends that when it assigned Boilermakers to weld 16 gauge stainless steel sheeting on a rotary snow plow, the Carrier violated historical practice and Rule 77, the Classification of Work Rule, which provides:

"Sheet Metal Workers work shall consist of tinning, coppersmithing and pipefitting in shops, yards and buildings . . . and on passenger train cars and engines of all kinds; the building, erecting, assembling, installing, dismantling and maintaining parts made of sheet copper, brass, tin, zinc, white metal, lead, black, planished, pickled and galvanized iron of 10 gauge and lighter . . .; oxy-acetylene, thermit and electric welding on work generally recognized as sheet metal workers' work, and all other work generally recognized as sheet metal workers' work".

The Organization asserts that the disputed work belongs to the Sheet Metal Workers under Rule 77.

The Carrier contends that in his appeal to the Carrier's highest Appeals Officer, the General Chairman relied only on the ground that the Claim was payable by default due to the Carrier's alleged failure to render a decision within the sixty-day time limit; the General Chairman did not mention Rule 77 or the merits of the Claim in this or any subsequent correspondence with the Carrier. The Carrier therefore maintains that during the handling of the Claim at the highest level of appeal on the property, the Organization abandoned its arguments based on Rule 77 and the merits of the Claim. In addition, the Carrier claims that the Organization neither raised nor discussed its request for 10 percent interest while the Claim was handled on the property.

The Carrier asserts that the Organization violated Section 153 First (i) of the Railway Labor Act and Rule 38 of the current Agreement by reviving its arguments under Rule 77 and the merits of the Claim in its Statement of Claim to this Board. The Railway Labor Act requires that all disputes must be "handled in the usual manner" on the property before submission to this Board. Rule 38 of the Agreement establishes the proper procedures for handling claims on the property.

The Carrier asserts that the Organization violated these two provisions because, while the Claim was being handled on the property, it did not disclose to the Carrier all the Rules and Agreement provisions upon which it was basing this Claim; the Claim presented to this Board was substantially different from the Claim denied by the Carrier's highest Appeals Officer.

In addition, the Organization failed to file its appeal within the sixty-day time period established in Rule 38; the Carrier asserts that it did not receive the General Chairman's appeal until more than a month after the sixty-day period ended. The Carrier argues that it is a well-established principle that if a Carrier denies receipt of a letter, then the Organization has the burden of proving that Carrier actually received it. In this instance, the Organization merely contends that the Carrier timely received the disputed appeal letter; the Organization has not presented any evidence in support of its contention. The Carrier therefore contends that the Claim must be denied in its entirety.

This Board has reviewed the evidence and arguments in this case, and it finds that the Claim must be denied both procedurally and substantively.

The major thrust of the Organization's argument is procedural. The Organization claims that since the Carrier failed to disallow the appeal of the General Chairman within the sixty-day time limit, the Claim must be allowed. The Organization argues, but presents absolutely no evidence in support of its argument, that the appeal of the General Chairman was undoubtedly received by the Carrier far in advance of the expiration of the time limit. The Organization argues that its experience has been that mail from Sacramento to San Francisco takes only two days, and that, prior to the incident, the Carrier has never failed to receive claims or appeals by the Organization even though many were sent. Somehow, based upon those arguments, the Organization argues further that the only reasonable and logical conclusion is that the Carrier chose to deny receipt of the appeal rather than abide by the Agreement.

The Rules are clear that the burden of proof that a letter was timely sent falls on the sender. In Third Division Award 22600, it was held:

"In the face of denial of receipt, the burden for proving that the letter was timely sent falls on the sender. That burden is not satisfactorily met by the supplying of only a properly dated purported carbon copy of a letter allegedly timely sent."

Also, in Award 7591, the Board held:

". . . The Organization has the burden of proving that the letter of appeal was properly delivered to the Carrier's Superintendent, Communications and Signals".

Since the Organization has not provided sufficient evidence that the letter was timely sent and received by the Carrier, this Board must deny the Claim on procedural grounds.

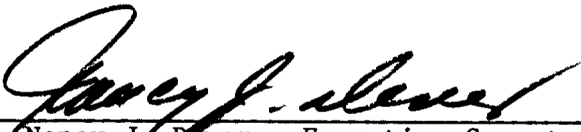
Briefly, with respect to the merits, it should be noted that the Organization has the burden of proving by a specific Scope Rule provision, or exclusive system-wide practice, that the work in question belongs to members of a particular Craft. See Awards 10514 and 10516. The Organization in this case has not provided any evidence to support its argument on the merits. Moreover, the Boilermakers have provided a Third-Party Submission which presents evidence that the Boilermakers have performed the work involved on occasions in the past. Consequently, the Claim must also fail for substantive reasons.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of June 1986.