

Form 1  
Page 3

Award No. 6749  
Docket No. 6533  
2-L&N-SM-'74

A W A R D

Claim No. 1 - Sustained

Claim No. 2 - Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of July, 1974.



The Second Division consisted of the regular members and in addition Referee Irving T. Bergman when award was rendered.

Parties to Dispute: ( Sheet Metal Workers' International Association )  
( )  
( )  
( Louisville and Nashville Railroad Company )

Dispute: Claim of Employees:

1. That the Carrier violated the current controlling agreement, particularly Rule 87 and Proposal 7(A), at Nashville, Tennessee, when they improperly assigned Electricians and Carmen the duty of installing No Smoking signs and Ansul Fire Extinguisher signs at fueling pits, Engineer's wash room building, Union Station, shop parking lots and Roundhouse walls on June 30, July 2, 15, 29, 1971.
2. That accordingly the Carrier be ordered to additionally compensate Sheet Metal Workers Martin Logan, J. L. Robertson, R. E. Walsh, W. E. Hasty, W. R. Grundy and D. B. Garland in the amount of two (2) hours and forty (40) minutes each at the punitive rate of pay.

### 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 employe 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 June 30, July 2, 15, 29, 1971, "No Smoking" and "Fire Extinguisher" signs of 22 gauge metal were placed on walls and posts at several locations. The work was done by carmen and electricians who were available. The signs were purchased from a local concern.

The Organization claims the work under Rule 87 of the Agreement, the relevant portion of which states: "---tinning, --- in shops, yards, buildings ---; The---, erecting, installing, --- parts made of sheet metal --- of 10 gauge or lighter ---."

Before discussing the merits of the claim, we shall consider the procedural question raised by the Carrier, namely: That the claim was not received in writing by the office of the Carrier authorized to receive it within sixty days from the date of the occurrence on which the claim is based. This is, in substance, a requirement of Proposal 7A cited by the Organization in its Submission. Proposal 7A goes on to state, in substance, that if the Carrier shall not notify whoever filed the claim that it has been disallowed, in writing, that the claim shall be allowed as presented.

The Organization contends that it deposited the claim in writing in a basket provided for that purpose on August 17, 1971, within the sixty day period allowed for filing the claim. By letter dated November 2, 1971, the Local Chairman notified the General Foreman that no answer was received within sixty days; therefore the claim should be allowed as presented.

The General Foreman denied that he received the claim in writing. He did recall that the Local Chairman had been in his office early in August to discuss the claim and that he did not agree that the work belonged to the Sheet Metal workers. However, when the claim was appealed to the Master Mechanic, he stated by letter dated November 12, 1971, that the claim be submitted in writing personally to the General Foreman, otherwise the claim is declined because it was not presented within the sixty day time limit. This suggestion was not accepted by the Local Chairman because there was no agreement which required delivery in person. In a letter dated January 5, 1972, to the Chief Mechanical Officer from the General Chairman, the claim was appealed further, noting that the Master Mechanic in his suggestion to resubmit the claim in writing did not extend the time limit to refile the claim. In his answer to the General Chairman dated January 26, 1972, the Chief Mechanical Officer removed any doubt about the application of time limits by stating: "In view of the uncertainty about the claim, we are agreeable to handle the claim on the basis of any possible merit it may have, if you are also agreeable to such handling please advise, if not, we must insist that as we did not receive a claim within the time limit, etc., that no monetary claim can be considered as legitimate." In his letter dated March 17, 1972, the General Chairman "rejected" the "decision" of the Chief Mechanical Officer, and appealed to the next higher officer.

In its Rebuttal, the Organization argued that the General Foreman did not answer the claim in the first instance because he knew it was legitimate, and that it was a weak excuse to say that he did not receive the claim in writing. This does not jibe with the fact that the General Foreman denied the claim in discussion with the Local Chairman, letter dated November 8, 1971. It would be just as arguable to say that the Organization insists that the claim be granted as presented (no written disallowance having been received within sixty days) because the claim was not legitimate. In fact, the Carrier twice offered to consider the claim on its merits but the Organization declined, evidently preferring to win by default.

Prior Awards have decided, in substance, that although a written document is forwarded through a usual channel for delivery, if receipt of the document is denied, the burden is on the party claiming delivery to prove that it was received, Second Division Award No. 3653, Third Division Awards 11575, 14695, 10173, 11505, 14354, 15395, 15496. In Third Division Award 11568, it was stated: "The burden is mutual. Not only must the griever adequately prove presentation of his claim, but should the same be denied, the Carrier must also adequately prove notification of denial. To allow a claim without a consideration of the merits, on a presumption that a letter containing the claim was delivered, when the receipt has been denied, could create chaos."

The present case falls within the reasoning of the above Awards. The Local Chairman stated that he placed the written claim in a basket designated for that purpose but the General Foreman denied receipt. The Record has no further proof of delivery and receipt. Furthermore, when the Carrier proposed personal delivery to assure receipt of the claim to be considered on the merits, and thereafter offered to consider the claim on the merits regardless of the issue of receipt, the Organization rejected this opportunity to consider the claim on its merits.

Under these circumstances, and because of the reasoning of the Awards cited above, with which we agree, the claim should not be allowed as presented, nor may it be considered on its merits.

A W A R D

Claim Dismissed.

Form 1  
Page 4

Award No. 6750  
Docket No. 6535  
2-L&N-SM-'74

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of July, 1974.