

The Second Division consisted of the regular members and in addition Referee Theodore H. O'Brien when award was rendered.

Parties to Dispute: (System Federation No. 42, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated the current working agreement, particularly Rules 1(a) and 29(a), when Carrier assigned Signal Foreman and nine (9) Signal Employees to perform work of Seaboard Coast Line Communications Maintainers on the dates of March 17, 18 and 19, 1975.
2. That the Carrier violated the procedural provisions of Rule 33 - 1(a) when it failed to give written decision on claim appealed in behalf of Communications Maintainers Howell, Butler, Haywood, Speight, Leffler, Justice, Langston, Arnold and Small on August 5, 1975, and that this instant claim should be allowed as presented.
3. That accordingly, the Carrier be ordered to additionally compensate Communications Maintainers N. S. Howell, D. E. Butler, J. L. Haywood, J. F. Speight, Jack Leffler, Sam Justice, G. T. Langston, D. H. Arnold, and T. R. Small thirty (30) hours 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.

The facts giving rise to the instant claim are as follows. The Claimants are Communications Maintainers assigned as such to the Carrier's Rocky Mount Division. The instant claim arose when, on March 17, 18 and 19, 1975, the Carrier assigned a Signal Foreman and nine signal employees to install a wireless voice defect detector at Carrier's Mile Post No. 103

between Enfield and Whitaker, North Carolina. The Organization's Local Chairman, in a letter dated April 22, 1975, filed a formal time claim on behalf of nine (9) Communications Maintainers for a total of two hundred and seventy hours at the time and one-half rate of pay. In the letter, the Local Chairman contended that the work in question belonged to Communications Maintainers under Rule 1(a), and Rule 29(a) of the controlling Agreement. This claim as presented was denied by Mr. L. M. Smith, Supervisor, Communications and Signals, by letter dated June 11, 1975. By letter dated August 5, 1975, Mr. Smith's declination was appealed to Mr. J. R. DePriest. However, the Carrier claims that this letter was never received by Carrier officials, and thus no response was made. In a letter dated October 10, 1975, General Chairman Dan L. Davis requested that the Carrier allow the claim as presented on August 5, 1975 in accordance with the provisions of Rule 33, 1(a) of the current Agreement. Rule 33, paragraph 1(a) states, in pertinent part, as follows:

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

In a letter dated October 21, 1975, Mr. A. D. Liggett (the Carrier official who replaced Mr. J. R. DePriest due to his retirement) informed the General Chairman as follows: "My office is unable to locate claim referred to. Your assistance in identifying same would be appreciated." Further correspondence and conference took place between the Carrier and Organization officials, however, no agreement was reached concerning the settlement of the claim.

The Organization contends that the claim should be allowed as presented in the letter of August 5, 1975 in accordance with Rule 33, 1(a); while the Carrier asserts that the Organization did not appeal Mr. Smith's declination of the claim in a timely manner, and thus, the matter should be considered closed in accordance with Rule 33, 1(b) of the Agreement.

There is a glaring dispute between the parties concerning the handling of the instant claim on the property. The Organization contends that the letter of appeal was mailed to the Carrier on August 5, 1975, well within the 60 day time limit prescribed by Rule 33. The Carrier contends, however, that they never received the original letter, dated August 5, 1975, and, in fact, did not become aware of this letter of appeal until October 28, 1975. Of course, October 28, 1975 was well in excess of the 60 day time limit since the original claim was denied on June 11, 1975. Many Awards of both the Second and Third Division of the Adjustment Board have considered issues similar to the one before us here. Many of those awards have adopted the prevailing view that the burden of proof lies with the party who allegedly mailed a letter to prove that the letter was indeed

received by the addressee thereof. This maxim was enunciated by the Third Division in Award No. 11505, wherein the Board held, in pertinent part, as follows:

"It is a general principle of the law of agency that a letter properly addressed, stamped and deposited in the United States mail is presumed to have been received by the addressee. But, this is a rebuttable presumption. If the addressee denies receipt of the letter then the addressor has the burden of proving that the letter was in fact received...

The perils attendant to entrusting performance of an act to an agent are borne by the principal."

While Award No. 11505 did not involve the same parties currently before this Board, nonetheless the principle enunciated therein is applicable to the instant dispute. See also Third Division Awards Nos. 15395, 11568, 14354 and Second Division Award No. 6750.

In the instant claim the Organization contends that a letter of appeal was mailed to Carrier's official through the United States Mail on August 5, 1975. However, the Carrier has denied receipt of this letter. Thus, the Organization has the burden of proving that the letter of appeal was properly delivered to the Carrier's Superintendent, Communications and Signals. Due to the conflict in the evidence, this Board is constrained to conclude that the Organization has not met this burden of proof.

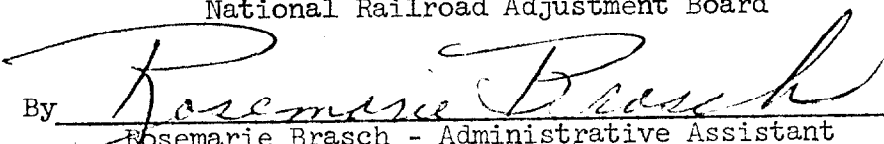
Consistent with the views expressed by prior Awards of this Division, we have no alternative but to hold that the claim is barred from consideration. We shall therefore not reach the merits of the claim. Accordingly, the claim is dismissed, and shall not constitute a precedent for other claims of a similar nature.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 12th day of July, 1978.