

The Second Division consisted of the regular members and in addition Referee Robert G. Williams when award was rendered.

Parties to Dispute: ( System Federation No. 7, Railway Employees'  
( Department, A. F. of L. - C I O.  
( (Carmen)  
(  
( Burlington Northern Inc.

Dispute: Claim of Employees:

- 1) That under the current agreement the Carrier improperly assigned other than carmen to assist wrecking crew to perform wrecking service at Brush, Colorado on December 13, 1973.
- 2) That accordingly, Carrier be ordered to additionally compensate the following Denver, Colorado carmen in the amount of fifteen (15) hours each at the applicable overtime rates:

L. B. Vechazone	A. R. Coe
J. C. Lombardi	G. E. Myers
J. M. Maurter	J. F. Swedensky
E. D. Blucher	F. S. Munoz
C. G. Breeden	J. A. Merrick
J. H. Rohr	W. W. Myers
L. A. Napolitan	J. R. Munoz
W. L. Hawkins	T. G. Morris

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 claim in this case was filed on January 26, 1974 by the Organization's Local Chairman. The Local Chairman's return address on the claim letter was 4460 Logan Street, Denver, Colorado. On March 22, 1974 a letter of denial was sent by Company mail to the Local Chairman in care of the Carrier's Assistant Master Mechanic at 23rd Street - Burlington Northern R. R., Denver, Colorado. The letter of denial was delivered to the Local Chairman

on April 4, 1974. The letter of denial therefore was actually received by the Local Chairman eight (8) days after the sixty (60) day time limit contained in Rule 34(a).

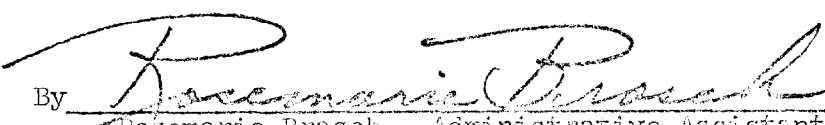
The procedural issue in this case is whether the Carrier complied with the sixty (60) day time limit in Rule 34(a). Such notice provisions ordinarily are satisfied when a party gives up control of a letter by dispatching it in the U. S. Mails or other method of communication authorized by the Organization. There was no evidence in the record to show that the Local Chairman authorized the use of the Company mails as a method of communication. In fact, the Local Chairman used a return address on his claim letter, but the Carrier elected to use another address for a carrier representative. The Carrier did not relinquish control over its letter of denial when it was sent in the Company mail. The Local Chairman did not authorize the use of Company mail. Under such circumstances notice was not effective until the Carrier relinquished control over the letter by actually delivering it to the Local Chairman. The notice of denial therefore was not given by the Carrier until after the sixty (60) day time limit under Rule 34(a). This Board has no discretion with respect to this time limit. Under Rule 34(a) a claim must be allowed as presented when the Carrier fails to give timely notice. The claim therefore must be sustained on a procedural basis and this Board expresses no opinion concerning the merits of substantive issues.

A W A R D

Claim sustained.

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 31st day of July, 1978.