

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (The Brotherhood Railway Carmen of the
(United States and Canada - AFL-CIO
(Burlington Northern, Inc.

Dispute: Claim of Employes:

1) That the Burlington Northern, Inc violated the terms of the controlling agreement, specifically Rules 27(a), 83 and 86, when they augmented the Pasco, Washington wrecking crew by the use of Carrier's Section employees at the site of a derailment near Glade, Washington on July 23, 1979.

2) That accordingly, the Burlington Northern, Inc. be ordered to additionally compensate Carmen J. R. Backstrom and D. M. Selph in the amount of eight (8) hours each at the applicable wrecking rate of time and one half (1-1/2) for service claimed of 7:00 P.M. July 23, 1979 through 3:00 A.M. July 24, 1979.

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.

During the claim handling procedure and in its submission to the Board, the Carrier argued that this claim should be barred from the Board's consideration because of the failure of the claim to be filed within the time limits specified by Rule 34 (a) which reads in pertinent part as follows:

"(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based..."

The date of the occurrence involved -- performance of certain work by other than Carmen -- was July 23, 1979. Thus, the time limit specified in Rule 34 (a) would be September 21, 1979. The initial claim was dated September 20, 1979. It was, however, not received by the Carrier's designated official until September 24, 1979. This represents no unusual delay in transit.

The Organization argues that the claim is timely, since it was dated and presumably mailed within the 60-day period.

This question has been reviewed in many previous awards. The key in this specific time-limit rule is the word "presented". Identical language (although a different rule number) was reviewed in Award No. 5122 (Dugan). That award stated in part:

"The test to determine whether or not this claim was "presented" to Carrier within the 60-day time limit period is the date within said 60 day time limit period that Carrier actually "receives" the claim. The Carrier herein denies receiving the letter on July 29, 1961, the last day of the 60-day time limit period. Therefore, the requirement of the claim being "presented" or in this instance, since it was by letter, being "received" by Carrier within said 60-day time-limit period, not having been proved by the Petitioners herein, on whom the burden rests to so prove compliance with said Article V, this claim must be dismissed."

The Organization, in its defense, cites Award No. 2480 (Schedler) which stated in part:

"The Carrier maintains that the time should be reckoned from January 1 to March 2, a total of sixty-one (61) days, or one (1) day beyond the time limit. The organization contends that the grievance occurred when the claimant received his check on January 14 and that the claim was filed forty-eight (48) days thereafter, well within the time limit. We believe the carrier's position is unrealistic. We believe it is reasonable to use the date the letter was mailed, which in this case would be within the sixty (60) day limit, and not the date it was actually received."

Award No. 2480 is distinguishable, however, in that the applicable rule therein required a claim to be "filed in writing within 60 days". This is not the same as "presented in writing...to the officer of the Carrier", as applicable here.

As to the outer limits of the time requirement, this is a close call. The parties, however, have bargained precise limits in claims handling applicable to both the Organization and the Carrier. The Board has no authority to bend or relax these requirements.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 6th day of June, 1984