

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood Railway Carmen/Division of TCU
(CSX Transportation, Inc.
(Louisville and Nashville Railroad Company)

STATEMENT OF CLAIM:

1. That the Louisville and Nashville Railroad Company (hereinafter referred to as the Carrier) violated the controlling Agreement when on December 15, 1988 they failed to properly call regular wrecker crew member H. V. Jones (hereinafter referred to as the Claimant) at 7:00 a.m. when another wrecker crew member, Mr. F. D. Beams, was relieved to start his vacation.

2. That the Carrier should be ordered to compensate Claimant for thirteen and one-half (13 1/2) hours at time and one-half or the amount he would have earned had he been called and used as a result of said violation.

3. That the Carrier failed to notify the General Chairman who appealed this case to Labor Relations within sixty (60) days from the date the appeal was filed, and therefore, violated Appendix D, Article V, Paragraph (a) of the Agreement regarding the time limits in the grievance procedure.

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.

The Organization maintains that it did not receive a timely denial of the Claim it appealed to Carrier's Director of Labor Relations on March 28, 1989, accordingly, on June 8, 1989, it requested that it be allowed because of this default. Carrier responded on August 3, 1989, contending that it indeed had written the Organization a letter dated April 10, 1989, timely denying the Claim. Resolution of this threshold issue is required before proceeding to the merits of the matter.

The holdings of this Board clearly indicate that in the face of denial of receipt of a claim (on the part of the Carrier) or denial of receipt of notice of disallowance (on the part of the Organization) the burden of proving that the claim or denial was timely sent falls upon the sender. (See for example Third Division Award 22600.) This burden is not satisfied by merely furnishing the party denying receipt with a copy of a communication allegedly timely sent. This burden must be met with a persuasive showing that not only was the letter written but also that it was timely dispatched, using an acceptable, safe method of delivery.

In this matter, Carrier has not satisfied the burden of demonstrating that it actually mailed a timely denial to the Organization. What was offered as proof of denial was a copy of letter dated April 10, 1989. There is no showing, indeed no attempted showing, that the letter was ever mailed to the Organization on that date. The fact that another Carrier Officer may have received his copy of the letter does not satisfy proof requirements that the Organization was mailed its copy. Different methods of delivery may have been utilized. It is probable that the internal copy was sent via Company Mail. It is just as possible that the Organization's copy was never mailed.

Placing a letter in the U.S. Mail generates a strong presumption that the letter will be delivered. However, before such a presumption can be developed it is necessary to demonstrate that a letter was actually properly addressed and deposited in the mail with correct postage. No such showing was made here, no such showing was attempted here.

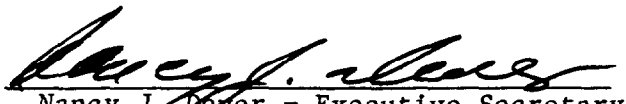
Carrier's proof that it timely denied the Organization's Claim is not persuasive. The claim will be sustained as presented without consideration of the merits.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of June 1992.