Award No. 19078
Docket No. SG-14642

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Clement P. Cull, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Rock Island and Pacific Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope Rule, when it assigned the Communication Department Line Gang to install new ten pin crossarms and string two new No. 8 copperweld line wires from Allerton north to Short Line Junction, beginning on or about August 3, 1962, which wires were to be used for code line control of the CTC from Allerton south into Kansas City, Missouri.

(b) The Carrier now be required to pay the members of Signal Gang No. 8 working under the direction of Foreman L. C. Zinsmeister an amount of time equal to that which the Communications Department employes were used to perform the aforementioned work. This pay to be at the punitive rate, in addition to that which they have already been paid and retroactive 60 days from October 3, 1962.

(Carrier's File: L-130-263)

EMPLOYES' STATEMENT OF FACTS: This dispute is a result of Carrier using Communications Department employes to install new ten-pin crossarms, hardware, pins and glass insulators from Allerton to Short Line Junction between which locations they strung in two #8 AWG copperweld signal wires. The distance between these locations is about 74 miles.

It was necessary to install the crossarms in order to provide the pin space necessary for the addition of the signal wires. They were installed in the top gain of the poles and replaced six-pin crossarms on which there was no spare pin space.

On this property the Communications and the Signal Departments use one pole line jointly. Some of the wires located thereon are communications wires and other control signal facilities .The employes of each department perform the necessary work on their portion of the pole line. Generally, the communications wires are on the top crossarms while the signal wires are

CARRIER'S EXHIBIT "B"
(Carrier's November 15, 1962 letter declining claim)

CARRIER'S EXHIBIT "C"
(Organization's January 11, 1963 letter of appeal)

CARRIER'S EXHIBIT "D"
(Carrier's January 23, 1963 letter of declination)

CARRIER'S EXHIBIT "E"
(Carrier's September 18, 1963 letter of conference)

OPINION OF BOARD: Two procedural questions are raised as follows: (1) Carrier contends that Petitioner did not notify the Signal Engineer of its rejection of his declination of the herein Claim and (2) Petitioner contends that Carrier raised the alleged failure of Petitioner to comply with Article V, Section 1(b) of the August 21, 1954 Agreement untimely and Carrier's contentions should be overruled and the merits considered.

Petitioner filed its Claim with the Signal Engineer on October 3, 1962. It was declined by the Signal Engineer on November 15, 1962. Thereafter on January 11, 1963, Petitioner appealed the declination to the Vice President-Personnel and on the same date sent a letter to the Signal Engineer rejecting his declination. It is the letter of January 11 to the Signal Engineer which is at issue here. On September 12, 1963, during a conference with Petitioner, Carrier raised the question with Petitioner as to its alleged failure to comply with Article V, Section 1(b) by failing to notify the Signal Engineer of its rejection of his declination of the Claim. Carrier confirmed its oral statement in a letter of September 18, 1963 in which it advised Petitioner that the Claim was barred for its failure to comply with the Agreement.

It is well settled that Petitioner has the burden of proving every part of its Claim including the fact that it complied with the procedural handling of it. At the September 12, 1963 meeting Petitioner did not come forward with a copy of the letter of January 11, 1963 rejecting the Signal Engineer's declination although Petitioner stated that it had mailed the letter to the Signal Engineer. Nor did it come forward with a copy of the letter upon receipt of the Carrier's letter of September 18. It did, however, include the letter in its submission before this Board.

Ordinarily, there is a presumption of delivery when mail is entrusted to the United States Post Office. This is rebuttable, however. The burden is on Petitioner to show receipt, not merely that it was mailed. In this respect Petitioner has failed to carry its burden. To avoid situations of this sort consideration might be given to defining adequate service. Thus the agreement or rules or procedure before this Board could define proper service as "mailing by certified or registered mail" and thus satisfy the requirements of the agreement under consideration here. Award 11505 (Dorsey). Such a rule would avoid situations such as we have here. These findings should not be read as to suggest that one or the other of the parties is not telling the truth. On the contrady we find that Petitioner sent he letter but that Carrier did not receive it. Award 15395 (Hamilton), 14354 (Ives). As receipt of the rejection is essential we find merit to Carrier's contention. It was succintly put in Award 14354 where the majority sustained a claim holding as follows:

> "Employes cannot be held responsible for the handling of Carrier's mail by the Post Office Department. It was the responsibility

of Carrier to be certain that the letter of disallowance was properly delivered to the Employes Local Chairman."

As to Petitioner's contention that Carrier slept on its rights in not raising the matter earlier, we cannot read into this case a waiver of the procedural rules by Carrier. We note that the objection was raised on the property months prior to the receipt of Petitioner's notice of intent filed with this Board on December 19, 1963 and Petitioner's first submission dated March 20, 1964. Moreover, all relevant provisions of all agreements to which parties are subject may not must be considered by this Board in determining the merit of the claim.

Denial or sustaining claims on a procedural basis is not a very satisfactory way of resolving disputes because the dispute remains unresolved. However, both parties are required to comply with the terms of the agreements they subscribe to. Procedural requirements are just as much a part of these agreements as are Scope, Seniority, Vacations and other rules and must be complied with by both parties.

Accordingly, we shall dismuiss the Claim on the basis that Petitioner failed to comply with the procedural requirements of the agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 24th day of March 1972.

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