

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22531  
Docket Amber MW-22376

William M. Rdgett, Referee

PARTIES TO DISPUTE: { **Brotherhood of Maintenance of Way Employees**  
( **Southern Pacific Transportation Company**  
( **(Pacific Lines)**

STATEMENT OF CLAIM: **"Claim of the System Committee of the Brotherhood that:**

(1) The claim in favor of **H. Q. Rodriguez (S.S.#556-34-6451)**, as presented on appeal to Labor Relations Officer D. C. Taylor in a letter dated **November 4, 1976**, be allowed as therein presented because decision thereon was not tendered in conformance with the provisions of Sections 1(a) and 1(c) of **Agreement Rule 44 [System File MofW 148-411]**.

(2) **Notwithstanding** and **without** prejudice to (1) above, the aforesaid claim in favor of **H. Q. Rodriguez** be sustained on its merits."

OPINION OF BOARD: **Carrier** mailed a letter on January 26, 1977 denying **H. Q. Rodriguez'** appeal following a conference on **January 25**. The **General Chairman** advised **Carrier** in May, 1977 that he had not received **Carrier's letter of denial**. **Carrier** reproduced a copy of the letter from its file and hand delivered it to the **General Chairman**. In July, 1977 the **General Chairman** asked that the claim be allowed as presented, taking the position that **Carrier's decision was untimely rendered**.

The Agreement &es not specify the use of registered or certified mail, and the practice has been to use the regular mail. **Carrier** has an obligation to prove that it mailed the letter to place it in line for timely receipt, and the Board is satisfied that it has met that obligation. It is clear that the lack of timely receipt was due solely to the failure of the Postal Service to deliver the letter. It was lost in the mail.

In some decisions the Board has indicated that party must insure receipt, and in order to do so should use registered or certified mail.. This is an unreasonable imposition upon thee. If they choose to undertake the direct and administrative expense necessary to monitor the

constant flow of correspondence between them, then the Board should recognize **their** choice. **If** they choose to avoid the expense of tracking each letter they **exchange**, then the **Board** should recognize that choice. When the parties have decided to use the **regular mails** then neither of them should be **charged** with the failure of the Postal Service to deliver a letter.

Here the parties have followed the practice of using the regular mail. Carrier has established that it mailed its letter of denial in timely fashion. Carrier did **all** that it could do under the system *jointly chosen by the parties*. To hold it responsible for the failure of the postal service would be unrealistic.

**Award No. 20724**, which involved these **parties**, settled the points raised by the organization on the merits in this case. **There** the Board said:

"This **Board** has held over **many years** that Management has the **right** to determine the fitness and ability of an **employee** for a particular position and **such** determination **will** not be disturbed unless it can be shown by a **preponderance** of evidence that Carrier acted arbitrarily and **capriciously**. Such evidence is **lacking** in this dispute, even under the special provisions of Rules 7 and 8. **It must** be noted that promotion to **supervisory positions** is of particular **importance** to **Carriers** and the skill and **ability demonstrated in a class** within the **group** &es not necessarily qualify an employee for supervision; leadership and **supervisory** aptitude, at very least, are generally required. Carrier's failure to give proper notice under Rule 8 (c) is not sufficient to overcome Petitioner's **omission** of **any** probative evidence to **support** its allegations. The **claim must** be denied."

The Board will follow Award **No. 20724** and deny the claim.

**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 **Employees** involved in this dispute are respectively Carrier and **Employees** 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 the **Agreement** was not violated.

A W A R D

**Claim** denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST ::

A. W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1979.