

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award **Number 22903**

Docket Number MW-22589

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(The Baltimore and Ohio Railroad Company

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

The claim presented on November 15, 1976 to Manager/Engineering W. E. Webster, Jr. by Assistant Foreman Richard **Kimmel, Trackman** Gary L. Hull and **Trackman** Leonard T. **Rhodes** shall be allowed as thereby presented because Manager/Engineering W. E. Webster, Jr. failed to **disallow** the claim within . sixty days of date of presentation. (System File **CUM-662/2-MG-1793**)"

**OPINION OF BOARD:** A timely claim was filed. Carrier mailed a **timely** letter of denial, by first class mail as was the parties' practice, but it was not received by the Claimants. The claim has been placed before the Board on procedural questions only. The Organization takes the position that it **must** be allowed because Carrier did not respond within the **time** limits. Carrier **takes** the position that the claim **must** be dismissed because the Organization did not **make** a timely appeal. The Board met a similar situation with the following observation in Second Division Award No. 3541:

"This presumption being that both parties are telling the truth, we find that carrier gave **timely** notices of disallowance of claim as required by the **Time Limit Rule** and that the local chairman failed to receive them, so neither is in default under the rule."

Here the Board will dismiss the claim since neither party has shown a right to a sustaining award on procedural grounds.

**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;

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

That the claim should be dismissed.

A W A R D

Claim dismissed.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

ATTEST:

*A.W. Paulsen*  
Executive Secretary

Dated at Chicago, Illinois, **this** 27th day of June 1980.