

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24187
Docket Number CL-24325

Tedford E. Schoonover, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Terminal Railroad Association of St. Louis,

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9525)
that:

1. Carrier violated Article V, and in particular Section 1.(a) of the August 21, 1954 National Agreement, when it failed to **timely** render decision to **Claimant** Paul A. Bruegger, **in** connection with claim filed December 28, 1979. (Carrier's File 013-297-19).

2. Carrier shall now be required to compensate Claimant Bruegger eight (8) hours pay each day December 17, 18, 19, 20, 21, 26, 27, 28 and 31, 1979, and January 2, 3, 4, and 7, 1980.

OPINION OF BOARD: Claim of Brotherhood that Carrier violated Article V, Section 1 (a) of the **National** Agreement of August 21, 1954, which requires that all claims be filed **in** writing **within** 60 days and disallowed in writing within 60 days from date filed; if not disallowed in **writing** within 60 days, the **claim must** be allowed.

This claim is referred to this Board on a procedural basis only on the grounds that Carrier failed to reply to the claim within the 60 days required by the rule.

The facts of the situation are that claim was properly filed under date of December 28, 1979, to Carrier Officer K. L. Kelley. On March 3, 1980, Local **Committeeman** York addressed a letter to **Mr. Kelley**, stating **more** than 60 days had passed and no answer had been received on the claim. In response, **Mr. Eelley** wrote "**The claim** of **Mr. Bruegger** was denied by **me** **in** a **memo** I placed on his desk prior to leaving the office the evening of February 20, 1980, **copy** attached."

The memo referred is quoted as follows:

"Paul

Your claim of December 28, 1979 is denied on the basis it is without merit and **in** addition is void of specific information..."

Claimant asserts he was on vacation on February 20 and 21, 1980, and when he returned to work on February 22, 1980 no such **memo** was on his desk.

The Brotherhood claim is based on the fact **Claimant** did not receive the denial **memo** within the required 60-day period; not that the **memo** was not issued within the **time** limits of the rule. Therefore, validity of the claim rests on the method of delivery and verification.

The Carrier **contends** that delivery of the denial by placing the **memo** on Claimant's desk followed normal practice. Thus, we have the unsupported allegation that Claimant did not receive the denial matched against Carrier evidence that denial was made in **memo** form in timely fashion and a copy thereof submitted into evidence. Nor does the Brotherhood challenge Carrier contention that use of such a delivery method, i.e., placing a copy on Claimant's desk was contrary to normal procedure.

In cases such as the one before us the burden of proof rests upon the Claimant to supply evidence of Carrier's alleged failure to comply with requirements of the rule. All we have is the unsupported assertion that the denial **memo** was not received. No evidence has been presented to refute Carrier's contention that the denial memo was prepared and delivered in timely fashion in accordance with well established **procedures** which has been **in** effect for many years. lacking required supporting evidence the Board has no alternative but to 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 ³

That the **Agreement** was not violated.

A W A R D

Claim denied.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of February 1983.