NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24528

THIRD DIVISION

Docket Number MW-24449

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Terminal Railroad Association of St. Louis

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

(1) The claim* as presented by the General Chairman on July 21, 1980 to Superintendent H. L. Vines shall be allowed as presented because Chief Engineer J. R. Bowman failed to disallow said claim (appealed to him under date of September 23, 1980) as contractually stipulated within Agreement Rules 42-l(a) and (c) (System File TRRA 1980-X).

*The letter of claim will be reproduced within our initial submission..

OPINION OF BOARD: The Organization had originally filed a claim on July 21, 1980. The claim was denied by Carrier on September 17, 1980, well within the Agreement's prescribed appeals time period, and it was appealed by the organization to the next level of the hierarchical appeals process on September 23, 1980. By letter, dated, December 1, 1980, the General Chairman informed the Director of Labor Relations that he had not received au answer to his September 23, 1980 appeals letter, and requested that the claim be allowed in accordance with the forfeiture provisions of Rule 42. The pertinent section of this Rule provides:

> "All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representatiave) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.'

By letter, dated, January 15, 1981, Carrier answer that it responded in timely fashion to the September 23, 1980 communication and produced a letter written by the Chief Engineer, dated, November 3, 1980, denying the claim. In defense of its position Carrier asserts that the U.S. Postal Service is the customary vehicle used by the parties to exchange correspondence and thus, it was not an Agreement violation when the Postal Service failed to deliver the letter. It argues that the General Chairman was supplied with a copy of the Chief Engineer's November 3, 1980 letter, while the claim was still being handled on the property and avers that the Organization has failed to establish that the letter was not mailed.

In reviewing this case, this Board is mindful of the Division's conflicting decisions regarding the question as to what constitutes satisfactory compliance with Rule 42. This is an explicit mandatory provision which attaches penalties for improper or non-compliance. A party charged with failure to comply with the Rule's clearly specified time limit appeals procedures, has the burden of proving compliance, if challenged.

In some cases, this Board held that it was up to the Carrier to demonstrate that it mailed a claim disallowance letter, and that employes could not be held responsible for the mails. In essence. the Board required proof such as certified or registered mail receipts, that a letter was mailed. In Third Division Award No. 10173, for example, we required such proof specificity, when the method of communication was left solely to the discretion of the party bearing the responsibility of notification. Evidence of mail delivery was an important proof factor.

In other cases; especially where the parties have traditionally relied upon the regular U.S. mail service to exchange correspondence and where tbe charged party,be it the employe organization or the Carrier, has produced a letter as proof of Agreement compliance, the Board bas considered this form of proof to be generally acceptable. In fact, in Second Division Award No. 8215, the Board held in part on the ancillary procedural question raised in that dispute that:

> "In Third Division Award No. 22531 involving this very Carrier and the Maintenance of Way Organization, the Board was faced with a somewhat similar situation. though with the shoe on the other foot; the Organization asserting non-compliance because it had allegedly never received a copy of the highest officer's declination:

There, as here, the defending party produced a copy of the letter as proof of Agreement compliance. The Board accepted this proof, in pertinent part, Award 8215:

> "'Here, the parties have followed the practice of using the regular mail. Carrier has established that it mailed its letter of denial in a timely fashion. Carrier did all it could under the system jointly chosen by the parties. To hold it responsible for the failure of the postal service would be unreasonable.'
>
> While the postal system failure may be just one of the variables or factors involved in this case, the facts remain here, as in Award No. 22531, that the Organization produced copies of both the Carrier and their correspondence, and under the authority of Award 22531, this is sufficient on this property."

Since this pragmatic construction would have validity where the parties here have routinely followed the practice of using the regular mail system to exchange correspondence, it would be unreasonable to hold Carrier in this instance responsible for the U.S. Postal Service's failure. This is especially true where we have no evidence of prior mail problems and a good faith relationship appears to exist between the parties at least with respect to Rule 24. The Carrier produced the November 3, 1980 letter and there is no evidence that it was not mailed.

The basic purpose of the grievance appeals procedure is to facilitate the orderly and timely progression of claims and to deter non-compliance with the time limits by providing forfeiture penalties. By definition, such emphasis is directed toward those parties who consciously or carelessly disregard their Agreement responsibilities. But such is not the case herein.

Accordingly, consistent with our reasoning in Second Division Award 8215 and Third Division Award No. 22531, where the fact patterns parallel this case, we will deny the claim. We hasten to add, however, that if the U.S. mail system causes similar problems to occur, the parties should agree on spelling out more precisely how correspondence is to be exchanged.

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 Employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment hoard 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: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of September, 1983.