

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24528
Docket Number **MW-24449**

George S. Roukis, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(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 42-1(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 an 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 employee 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 employee **or** his **representative**) 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 employees 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 the charged party, be it the employee organization or the Carrier, has produced a letter as proof of Agreement compliance, the Board has 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 maybe 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 Employees involved in this dispute are respectively Carrier and **Employee** 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

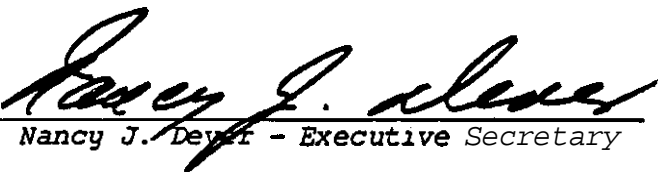
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

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