

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25537
Docket Number CL-25045

George S. Roukis, Referee

PARTIES TO DISPUTE: {
(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the **System** Committee of the Brotherhood (**GL-9715**)
that:

*(1) Carrier violated the rules of the Clerk-Telegrapher Agreement at Rochester, **New York**, when it failed to deny Claim filed on September 22, 1981, within the allowable time limits, and

(2) As a result of such impropriety, Carrier shall now compensate employee D. W. Woods, Rochester, New York, an additional eight (8) hours' pay for each date of July 27, 28, 29, 30, 31; August 3, 4, 5, 6, 7, 10, 11, 12, 14, 17, 18, 19, 21, 24, 26, 27, 28; September 1, 2, 3, and 4, **1981.***

OPINION OF BOARD: The basic question in this dispute is the appropriate calculation of the grievance denial time limits under Rule 48 of the Joint Clerk-Telegrapher Agreement of June 4, 1973. Paragraph (a) thereof reads in part as follows:

*(a) 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 sixty (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 sixty (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 of grievances."

In the case at bar, determination of this question pivots on whether Carrier's denial letter, dated **November 20**, 1981, though postmarked **November 23**, 1981, was procedurally timely when it was received by the **BRAC** Division Chairman on **November 28**, 1981. The Claim letter was dated September 22, 1981, but was not received by Carrier until September 25, 1981. There is no dispute regarding the aforesaid dates, but differences in the interpretative application of Paragraph (a) is at issue.

The Organization argues that Carrier failed to comply properly with Paragraph (a) since the Division Manager's denial was not received until November 28, 1981. It contends that the denial letter should have been actually received within 60 days of its initial receipt on September 25, 1981. It asserts that consistent with **Decision No. 16** of the National Disputes Committee which construed the application of an identical time limits provision, the National Disputes Committee comprising Carrier and Labor members constituted the measurable parameters of the 60 days time period. (Decision No. 16 involved BRAC and the Denver and Rio **Grande** Western Railroad Company). The Organization avers that this interpretation was upheld by subsequent Third **Division Awards** and maintains that actual receipt is the defining **criterion**. (See Third Division Awards Nos. 14369, 14592, 14603, 14904, 15443, 16017, 16163, 16858, 17667, 18004, 19999, 21787, 22799. Also see Fourth Division Award No. 3615 and Decision 16 of the National Disputes Committee.)

Carrier does not contest the methodology by **which receipt** of the initial Claim is computed, but it argues that timely denial notification requires only that the mailing of a denial response be effectuated within the 60 day period following the date the Claim was received. It asserts that Third Division Award No. 14695 competently addressed this issue; and further explicated the application of Decision No. 16 of the National Disputes **Committee when it held that mailing** or posting of the denial response within the 60 day period satisfied the notification requirement. It also cited Third Division Award Nos. 18881, 20981 and Second Division Award Nos. 8680 and 8725 as being on point with its position.

As to the substantive merits of the Claim filed on September 25, 1981, Carrier avers that it **properly** required **Claimant** to fill the vacancies at Rochester, New York, since none of the Extra Board employees at Riker, New York nor those furloughed at **Salamanca**, New York was qualified to fill Operator vacancies at Rochester. It asserts that Claimant was **used in** accordance with the emergency provisions of Rule 24 and compensated at the punitive rate of pay when applicable.

In our review of this case, we concur with the Organization's position. Admittedly, while there is a dichotomy of judicial perspectives on what **constitutes** effective notification under Rule 48(a), we believe that the reasoning set forth in the Awards referenced by the Organization is **more** in accordance with the contemplated intent of Rule 48. By definition, balancing the reciprocal obligations of presenting a timely Claim and answering said Claim implicitly requires a faithful literal adherence to the applicable provision's specific time requirements. In essence, a Claim is filed or appealed when received by the officer authorized to receive same. (See Third Division **Award** No. 22799.)

In numerous Awards of the National Railroad Adjustment Board, the Board took the position that a written denial must be in **the** hands of the petitioning Organization not later than on the last day of the time period. See Third **Division** Award No. 15443. Timely receipt was considered the essential determinant. In Third Division Award No. 18004, the Board reiterated this interpretative construction and voided the employer's written denial when it was not received by the affected Organization by the last day of the time period. The Fourth Division followed this same line of reasoning. In Award No. 3615, the Fourth Division sustained the Claim when the denial letter was not received by the Organization within 60 days.

In the instant case, the 60 days time period was activated on September 26, 1981. November 25, 1981, was the 60th day. Inasmuch as the letter postmarked on November 23, 1981, was not received by the **BRAC** Division Chairman until November 28, 1981, the response was untimely. The denial **was** not received by the Organization within 60 days. Accordingly, consistent with the decisional rationale expressed in the more persuasive Awards cited herein, we are compelled to sustain 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 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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois this 28th day of June 1985.