For 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 28168
THIRD DIVISION Docket No. MW-27461
89-3-86-3-706

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(The Kansas City Southern Railway Company

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

(1) The ten (10) days of suspension imposed upon Roadway Mechanic J. W. Brown for alleged responsibility in connection with the incident in which Machine MW 894 was destroyed by fire on January 11, 1985, was arbitrary, capricious and on the basis of unproven charges (Carrier's File 013.31-328).

(2) The claim as presented by First Vice Chairman G. A. Sackett on March 25, 1985 to Administrative Manager R. C. John shall be allowed as presented because said claim was not disallowed by Administrative Manager R. C. John in accordance with Rule 14-1(a).

(3) Division Engineer T. L. Barker failed to disallow the claim (appealed to him under date of August 10, 1985) as contractually stipulated within Rules 14-1(a) and 14-1(b).

(4) As a consequence of either or all (1), (2) and/or (3) above, the claimant shall be compensated

> '... for all lost time, including any overtime that was worked by another mechanic on Mr. Brown's area of responsibility, while Mr. Brown was off from the period of March 18, 1985 through March 27, 1985 as a result of investigation held February 11, 1985.'"

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Essentially, the Organization argues this Claim, which arose because of a ten (10) day suspension issued to the Claimant, must be sustained because the Carrier twice failed to meet the time limit provisions of Rules 14-1(a) and (b). Specifically, the Organization charges the Carrier did not respond to its initial Claim letter dated March 25, 1985, and compounded this failure by not responding to the appeal letter dated August 10, 1985.

The record reveals that on June 18, 1985, the Carrier responded to the Organization's June 10, 1985, letter demanding payment of the Claim because of the time limit violation. The Carrier therein asserted the Organization's Claim letter of March 25, 1985, was never received, and the June 10 letter was its first notice of any such Claim. The Carrier then addressed the merits and denied the Claim. On August 10, 1985, the Organization appealed that denial. On November 4, 1985, the Organization wrote to the Carrier stating it had not received a response to its August 10 appeal and asserted that, thereby, the Carrier had violated the time limit provisions. On November 10, the Carrier responded and denied receipt of the August 10 appeal.

Given the above, this Board is required to address the alleged time limit violations, as well as the Carrier's contentions it had never received the initial claim or appeal.

Clearly, Rule 14-1(a) requires all claims or grievances to be presented in writing within sixty (60) days from the date of the occurrence upon which the claim/grievance is based. The Organization contends it "presented" a Claim to the Carrier on March 25, 1985, which the Carrier, as indicated, denied receiving. This Board has previously held that in such circumstances the burden of proof is upon the sender to demonstrate that the letter was received (See Third Division Awards 22600, 26675, and 21088). In Award 26675, the Board cited Third Division Award 11505 wherein it stated:

> "It is a general principle of the law of agency that a letter properly addressed, stamped, and deposited in the United States mail is presumed to have been received by the addressee. But, this is a rebuttable presumption. If the addressee denied receipt of the letter then the addresser has the burden of proving that the letter was in fact received. Petitioner herein has adduced no proof, in the record, to prove de facto receipt of the letter by the Carrier .... Upon the record before us we find that Petitioner has not proven that it presented the Claim, to Carrier, within the time limitation agreed to by the parties; and, in the absence of such proof the claim is barred...."

In this matter, the Organization has submitted no evidence to support its allegation that it "presented" the claim to the Carrier. There is no statement or proof an Organization representative put the letter in the U.S. mail which placed it in line for timely receipt by the Carrier. If the parties wish to avoid the expense of tracking each piece of correspondence, then the burden is on the sender, when receipt is disputed, to offer tangible proof the letter was, in fact, placed in the regular mail by an identifiable individual. The existence of a copy of the disputed correspondence is not a substitute for such proof. Based upon the Organization's failure to meet this burden, this Claim is hereby dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1989.