

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

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

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

(1) The thirty (30) days' suspension imposed upon Track Laborers R.L. Green and L. J. Williamson, Jr. for alleged violation of General Rules E, L, Q and N on May 29, 1986, was without just and sufficient cause and on the basis of unproven charges (Carrier's file 013.31-358).

(2) The Claimants' records shall be cleared of the charges leveled against them and they shall be compensated for all wage loss suffered."

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 employees involved in this dispute are respectively carrier and employees 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.

A primary consideration in this dispute is whether the Organization complied with the prescribed time limit requirements of Rule 14-1B, when it responded to Carrier's Claim denial letter of October 28, 1986. According to Carrier, the Organization's appeal letter dated December 28, 1986, was appealed to the General Superintendent's office until January 22, 1987, thus making the appeal procedurally untimely.

In response to this contention, the Organization asserted that the central question regarding appeals timeliness issues is not the date an appeals letter is received, but rather, the date effective appellate action is taken. In other words, it maintained that the appeals letter herein was dated and mailed on December 28, 1986 and, as such, was taken within the required sixty (60) days time period. It cited several Third Division Awards to support its position that time is computed from the date of mailing and inferentially observed that the sending party should not be charged with the period of time an appeals letter is in the hands of the post office. (See Third Division Awards 10490, 11575, 14695, 16370, among others.)

Contrawise, Carrier asserted that the appeals letter was untimely since it was not received by the General Superintendent's office until January 22, 1987, some 85 days after its initial denial letter of October 28, 1986. Specifically, it argued that the date the appeals letter was originally received was the decisive determining factor, and not the date the letter was mailed. It referenced several Second and Third Division Awards to affirm its position. See Third Division Awards 8564, 9189, 14808, 14829, and 16010. Also, see Second Division Awards 11257, 10637, 10145, 8833 and 8268.

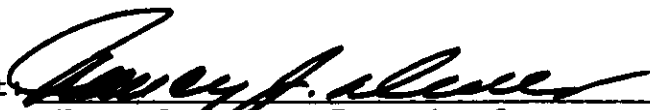
In considering this case, we concur with Carrier's position. Recognizing, of course, the extensive number of awards on the question of procedural timeliness, the Division has established the fundamental principle that a Claim or an appeals letter is considered filed on the date said letter is received either by the Organization or the Carrier. See, for example, Third Division Awards 26549 and 25208. In the case herein, the Organization's appeals letter received by Carrier on January 22, 1987, was dated December 28, 1986, but there is no clear cut indisputable evidence when said letter was actually mailed. In essence, this Board is confronted with positional assertions that are diametrically apposite and, accordingly, the sender of the appeals letter has the burden of proving that the letter was conveyed within the applicable time limitations. In Second Division Award 10157, which addressed an analogous situation, though the Employer was held accountable in that case, the Division ruled that the sender of the letter, of necessity, was responsible for proving that communication was sent within the required time limits. Since such proof is lacking herein, we are constrained by the force of our precedents to deny the Claim herein.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1989.