

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

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

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

(1) The discipline imposed upon Crane Operator Helper W. L. Rivers for alleged unauthorized absence from work commencing at approximately 2:15 P.M. on January 21, 1988, was unwarranted, without just and sufficient cause and in violation of the Agreement (Carrier's File 013.31-386).

(2) The claim as presented by First Vice Chairman G. A. Sackett on June 29, 1988, to Administrative Manager (Engineering Field) R. C. John shall be allowed as presented because said claim was not disallowed by Mr. R. C. John in accordance with Rule 14.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the claim shall be allowed as presented, i.e., Mr. W. L. Rivers shall be paid for all lost time, including overtime and holiday pay and his record cleared of the charges leveled against him."

FINDINGS:

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

The carrier or carriers and the employee 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.

Following a formal investigation, Claimant was assessed a five day suspension for unauthorized absence from work. On September 27, 1988, the Carrier received a letter dated September 14, 1988, from the Organization contending that the Carrier failed to reply to its Claim letter dated June 29, 1988, which the Organization states was mailed via Express Mail on June 30, 1988. The Carrier denied receiving this Claim and takes the position that the

Organization failed to appeal the discipline within the applicable time limit. The sole issue to be decided by this Board, therefore, is whether or not the Organization filed a timely Claim. If so, the Claim must be sustained due to the Carrier's failure to respond. If not, the Claim must be denied on the basis of the Organization's time limit violation.

In asserting its position, the Organization has submitted a copy of the Claim letter, the dated and numbered customer receipt from the U.S. Postal Service, and a signed Postal Service return receipt with a corresponding number. This number was also typed on the Claim letter. These documents were furnished to the Carrier during the handling of the dispute on the property and the authenticity of the Postal Service receipts was never questioned.

When one party places correspondence in the U.S. Mail, there is a presumption that it was received by the addressee. This presumption may be rebutted by the mere denial of the addressee that the correspondence was received, in which case the sender has the burden of proving that it was, in fact, received. In this case, the documentation provided by the Organization meets that burden. The return receipt acknowledges that the Carrier received the Express Mail envelope which contained the Claim. Although the Carrier suggests that the envelope contained something other than the Claim letter, there is no evidence to support this assertion.

Accordingly, we conclude that the Organization filed a timely Claim which was not denied by the Carrier within the applicable time limit. Without regard to the merits of the Claim, it must be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1990.