

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30241
Docket No. MW-30125
94-3-91-3-552

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

(Brotherhood of Maintenance of Way
(Employees
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former
(Chesapeake and Ohio Railway Company)

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

- (1) The Agreement was violated when the Carrier assigned outside forces (Steel Services) to perform material handling work, i.e., unload wooden ties, pull spikes and remove tie plates, reload ties onto Carrier gondola cars, for transportation to other locations, at Mile Post 277.2 on the Clifton Forge District of the Huntington Division beginning April 6 through 30, 1990, [System File C-TC-6094/12 (90-595) COS].
- (2) The Agreement was further violated when the Carrier failed to discuss the matter with the General Chairman in good faith prior to contracting out said work as required by the October 24, 1957, Letter of Agreement (Appendix 'B').
- (3) The claim* as presented by General Chairman J. R. Cook on May 7, 1990, to Division Engineer J. E. Rahmes shall be allowed as presented because said claim was not disallowed by Division Engineer J. Rahmes within the stipulated time limits of Rule 21.
- (4) As a consequence of the violations referred to in Parts (1) and/or (2) and/or (3) above, Messrs A. Baird, D. Harris and C. Reynolds shall each be allowed one hundred thirty-six (136) hours' pay at their respective straight time rates and one hundred seventy-six (176) hours' pay at their respective time and one-half rates of pay.

- * The initial letter of claim will be reproduced within our initial submission."

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 employee 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.

The claim herein was first received by the Carrier on May 10, 1990. It was denied by letter dated July 9, 1990, but the Organization asserts the denial letter was mailed in an envelope with a postage meter date of July 12, 1990. Although there is no evidence the letter was backdated, as suggested by the Organization, the record sufficiently shows the letter was not placed in the U. S. Mail until July 12, 1990, which is beyond the sixty (60) day limit for denying claims under Rule 21(h) of the Agreement.

It is the date of mailing of the denial, not the date it is written, that is determinative. As required by that Rule, the claim will be sustained as presented.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Linda Woods
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.