

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION****Award No. 31643
Docket No. SG-31495
96-3-93-3-498**

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Montana Rail Link, Inc.

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Montana Rail Link (MRL):

Claim on behalf of S.A. Whaley, D.L. Abromeit, D.O. Hopkins and S.A. Price for payment of a total of 109 hours at their respective straight time rates. Carrier violated the current Signalmen's Agreement as follows:

A. Carrier violated the Scope Rule when it utilized other than employees covered by the Signalmen's Agreement to perform the covered work of installing signal wires from August 15 to September 2, 1992, and deprived the Claimants of the opportunity to perform this work.

B. Carrier violated Article 12 (B) when it failed to respond to the initial appeal of its denial within the established time limits.

Carrier's File No. RK/C-1859. General Chairman's File No. MRL-6-92.
BRS File Case No. 9152-MRL."

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 or 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.

As Third Party in Interest, the Brotherhood of Maintenance of Way Employees was advised of the pendency of this dispute, but it elected not to file a Submission with the Board.

As evidenced by Paragraph B of the Statement of Claim, *supra*, this case involves a procedural contention which must be addressed as a threshold issue by the Board. The dispute in this case originated with a claim letter initiated by the Organization and sent via Certified U.S. Mail to Carrier on October 9, 1992. By letter dated November 3, 1992, Carrier denied the claim via regular First Class U.S. Mail. Subsequently, by letter dated December 22, 1992, sent via Certified U.S. Mail, the Organization appealed the initial claim denial to Carrier's highest appeals officer. Carrier says that it denied this claim to the Organization by letter dated February 11, 1993. However, the Organization, by letter dated March 29, 1993, stated that no denial of their claim was ever received from the Carrier. Carrier responded to the March 29th communication from the Organization on April 1, 1993, and sent to them a copy of the February 11th denial letter which Carrier insisted had been sent via First Class U.S. Mail on February 11th. The time limits issue remained a point of contention throughout the on-property handling of this dispute and must now be resolved by this Board.

The time limits for handling claims and grievances on this property is set forth in Article 12, CLAIMS OR GRIEVANCES, which reads as follows:

**"ARTICLE 12
CLAIMS OR GRIEVANCES**

A. All claims or grievances must be presented in writing by or on behalf of the employee involved to the officer of the Company authorized to receive same, within sixty (60) days from the date of occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Company shall within thirty (30) days from the date same is filed, notify the employee or his representative of the reasons for such disallowance. In the event the Company fails to disallow the claim or grievance within the prescribed period, the claim or grievance shall be allowed, but such allowance will not be considered as a precedent or waiver of the Company's position as to any other claims or grievances.

B. If the claim or grievance is denied under Paragraph A, the applicable General Chairman has sixty (60) days to appeal the claim to the Company officer designated to handle claims or the claim shall be considered waived. The carrier officer must decline the claim within sixty

(60) days or the claim will be allowed. Failure to comply with the time limits under this Section will not be considered as a precedent on either party on similar grievances."

In defense of their position on this matter, Carrier argued that throughout its history it has "routinely (and without incident) utilized the U.S. Mail Service to effect delivery of correspondence concerning time claims and grievances." Carrier insisted that, upon receipt of the Organization's March 29th communication, it immediately sent via facsimile to the Organization a copy of the February 11th denial. They further sent via First Class U.S. Mail a copy of the February 11th denial. Carrier contended that "simple logic dictates that it would have been impossible for the carrier to create such a substantive document on a moment's notice to respond to the Organization's March 29th letter."

This Board has been faced over the years with many situations similar to the one here involved. The Board does not relish this type of resolution of a dispute. The Board has tried in all of these disputes to assume that basic integrity and honesty exists on both sides of the dispute. However, there are many precedential awards of this Board which must be considered when reviewing disputes of this nature. In two early awards of the Third Division, we find the following logic and reasoning:

"AWARD 10173, THIRD DIVISION

Article V, Section 1 places correlative obligations upon the parties with respect to the progression of claims. Just as Employers bear the responsibility of being able to prove that a claim is timely filed with a Carrier, so the burden of proof rests with a Carrier to prove that Employers are duly notified in writing of the reasons for disallowance. Notification connotes communication of knowledge to another of some action or event. The method of communications in the instant case was left to the discretion of the party bearing the responsibility of notification and the Carrier apparently elected to use the regular first class Mail service rendered by the Post Office Department. Had the Carrier elected to use certified or registered mail service offered by the Post Office Department, probative evidence of delivery would be available to support the Carrier's assertion. Employers cannot be held responsible for the handling of Carrier's mail by the Post Office Department. It was the responsibility of the Carrier to be certain that the letter of disallowance was properly delivered to the Employers' Local Chairman."

AWARD 11505, THIRD DIVISION

"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 denies receipt of the letter then the addressor 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.

The perils attendant to entrusting performance of an act to an agent are borne by the principal."

And again in Third Division Award 23553 we read:

"Every Division of this Board has attempted, through its decision, to be meticulously accurate and consistent in applying time limits as written in the Schedule Agreement. The parties in this industry are fully aware of the Board's position on adherence to time limits and the majority of claims have no time limit problems. We see no reason to deviate from a policy of strict adherence to time limits here. This case will be sustained on the time limit issue. The merits of the case need not be reached."

Similar conclusions were reached in Third Division Awards 28182, 27769, 25309, 25208, 21088, 20763, 18661, 18004, 17999, 16357 and 14354.

The Board in this case finds no evidence or reason to deviate from these principles. There is no probative evidence to support Carrier's position in this instance. Therefore, the claim in this case will be sustained on the procedural issue without reaching a determination on the merits of the dispute. The named Claimants should be compensated a total of 109 hours at their respective straight-time rates, "divided equally among them."

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of August 1996.