

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 32426  
Docket No. MS-32956  
98-3-96-3-335

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Stephen D. Donovan

**PARTIES TO DISPUTE:** (

(Metro North Railroad

**STATEMENT OF CLAIM:**

“Claim for awarding of Inspector’s rights due to the fact that the position as per advertisement BRS 94-109 has since been abolished, and for all hours worked for any and all overtime at the time and one-half rate of pay for Inspector, paid to the individual who was awarded the position.”

**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 were given due notice of hearing thereon.

The sparse record presented to this Board shows that a claim was mailed by the Organization to the Carrier dated January 3, 1995 seeking Inspector’s rights and backpay on Claimant’s behalf because Claimant allegedly was not allowed to exercise his seniority for such a position which was vacant while Claimant was on Family Leave.

Specifically, with respect to the record developed on the property, the record presented to this Board consists of a receipt for certified mail showing a mailing date of January 3, 1995 to an address at 345 Madison Avenue, New York; the Carrier's denial of the claim dated February 22, 1995; the Carrier's June 14, 1995 letter; and a letter dated November 20, 1995 from the General Chairman.

We note that Rule 4-K-1(a) requires the Carrier to deny claims "within forty-five (45) calendar days from the date same is filed." Further, according to that rule, "[i]f not so notified, the claim shall be allowed as presented."

In its Submission, the Carrier admits that "[t]here is no contractual provision that the postmark must be used to determine the date of a claim, but there is a past practice to utilize that date, under normal circumstances."

The correspondence presented to this Board in this record shows that on February 22, 1995, the Carrier denied the claim which was mailed on January 3, 1995. Based upon the practice of the parties for determining the date of claim filing, that denial was outside of the 45 day requirement specified in Rule 4-K-1(a). While the Carrier asserts in its February 22, 1995 denial that the claim was not received until February 10, 1995, the Carrier's admission in its Submission that the postmark date governs shows that the claim was not timely denied within 45 days as required by Rule 4-K-1(a).

In its Submission, the Carrier asserts that the claim "was mailed to an incorrect address, thereby delaying delivery" and "it was agreed on the Property by the Union and the Company, that a time limit argument would not be progressed as a ground of appeal". But, there is no specific evidence in the record presented to this Board by correspondence developed on the property that the mailing of the claim to 345 Madison Avenue in New York was an improper address of the Carrier. Nor is there evidence presented to this Board by correspondence developed on the property of any agreement that Claimant could not progress a timeliness argument in his appeal to this Board.

This Board can only decide cases based upon the record developed on the property and given to us. Unsupported arguments in a Submission based upon facts not in the record carry no weight. The record developed on the property and given to us shows a claim postmarked on January 3, 1995; a denial of that claim on February 22, 1995; and a Rule which requires that claims must be denied "within forty-five (45)

calendar days from the date same [the claim] is filed." We also have an admitted practice by the Carrier that the Carrier and the Organization use the postmark for the date of the claim. Therefore, based upon that evidence and admissions before us, the record shows that the Carrier's denial was not made within 45 days of the filing of the claim as required by Rule 4-K-1(a). Under that Rule "the claim shall be allowed as presented." We therefore cannot address the Carrier's arguments on the merits. We have no choice but to sustain the claim as presented.

Claimant's Inspector rights shall be granted retroactive to the time the bid was awarded to the other employee. Further, Claimant shall be made whole for any losses in pay as a result of the Carrier's failure to grant Claimant Inspector rights as sought, including overtime for lost overtime opportunities.

**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 21st day of January 1998.**