

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32723
Docket No. SG-34054
98-3-97-3-598**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Kansas City Southern Railway Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern Railroad (KCS):

Claim on behalf of M. G. Jones and B. J. Headrick for payment of 15 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used an outside contractor to install two power service poles for the signal system at Mile Post T127.9 and Mile Post T128.9, and deprived the Claimants of the opportunity to perform this work. Carrier also violated Rule 48 when it failed to provide notice of the disallowance of the claim within 60 days of the date on which the claim was filed. Carrier's File No. 013.31-525(1). General Chairman's File No. 96-20-01. BRS File Case No. 10342-KCS.”

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 procedural issue noted in the Statement of Claim must be addressed as a threshold matter. Rule 48 provides, in pertinent part, as follows:

"... Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

According to the assertions contained in the Organization's correspondence on the property, the claim was filed on April 5, 1996 by certified mail. The Carrier's denial letter was not received until June 21, 1996. After realizing that he had violated the 60-day time limit, the Signal Supervisor called the Local Chairman to inform him of the fact. The Organization went on to allege the denial letter was backdated to May 31, 1996 to avoid the time limit violation.

In its first opportunity to respond to the alleged time limit violation, the Carrier wrote only that it was "... unable to substantiate that the time limit was violated." It did not then, or at any later time, deny the backdating allegation nor did Carrier ever deny the alleged telephone conversation, or its content, between the Signal Supervisor and the Local Chairman.

The Organization also introduced evidence showing the Carrier's denial was not received until June 21, 1996.

Given the record of the parties' handling of this matter on the property, we find that Rule 48 must be applied as written. Accordingly, the claim must be allowed as presented.

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 19th day of August 1998.