

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32727
Docket No. SG-33529
98-3-96-3-1097**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Baltimore &
(Ohio Railroad Company)**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (B&O):

Claim on behalf of D.G. Brown for payment of 24 hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Rule 14(g) and the Memorandum of Agreement dated March 24, 1984, when it used junior employees to perform overtime service on October 19, November 13 and November 14, 1995, and deprived the Claimant of the opportunity to perform this work. Carrier also violated Rule 54 when it failed to provide notice of the disallowance of the claim within the time limits. Carrier's File No. 15(96-71). BRS File Case No. 9996-B&O."

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.

Claimant was assigned as an Independent Signal Maintainer with headquarters at Queensgate Yard, Cincinnati, Ohio. Claim was filed by Claimant on his own behalf by letter dated November 15, 1995, contending a violation of Rule 14(g) on October 19, November 13 and 14, 1995, when Carrier used junior employees for overtime assignments, and requested 24 hours pay at the time and one-half rate. The claim was denied by letter postmarked January 16, 1996.

Claim was appealed by the Organization on February 29, 1996, asserting violation of Rule 54, Time Limit Rule, account Carrier failed to disallow the claim within 60 days of the date the claim was presented. Carrier disallowed the claim asserting that it was disallowed on the 60th day which is permissible.

Review of the record of handling on the property reveals that the initial claim dated November 15 was hand delivered to the proper Carrier officer on November 16, 1995. Although it was denied by letter dated January 14, it was not posted until January 16, 1996, which is one day beyond the 60 day limit for denying claims under Rule 54(a).

The Board has held numerous times that it is the date of posting (mailing) of the denial, not the date the letter is written that determines the date of denial. Carrier's denial was untimely.

Inasmuch as the requirements of Rule 54(a) of the Agreement are clear and unambiguous, 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.