

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35721
Docket No. MW-34097
01-3-97-3-640**

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

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Western Maryland
(Railway Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The claim as presented by District Chairman S. D. Ferris on June 20, 1996 to Division Engineer J. F. Bippus shall be allowed as presented because the claim was not disallowed by him in accordance with Rule 16 [Carrier’s File 12(96-1210) WMR].”**

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.

Rule 16 (Time Limit on Claims) provides, in pertinent part, that:

- “1. All claims or grievances arising on or after January 1, 1955 shall be handled as follows:**

- (a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within 60 day 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 a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

* * *

3. A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof. With respect to claims and grievances involving an employee held out of service in discipline cases, the original notice of request for reinstatement with pay for time lost shall be sufficient."

A careful review of the record indicates that the Vice Chairman filed the disputed claim in two different letters dated June 20, 1996. The Vice Chairman sent the first letter by certified mail, return receipt requested, to the Vice President of Employee Relations. The Director Employee Relations responded by regular mail, in a letter dated June 26, 1996, that informed the Vice Chairman that he had sent the claim to the wrong person, namely, the Vice President of Employee Relations. The Director Employee Relations informed the Vice Chairman of the identity of the correct person

to direct the claim, namely, the Division Engineer for the Cumberland Coal Business Unit, whose identity had recently changed.

The Vice Chairman sent a revised claim letter, also dated June 20, 1996, to the former Division Engineer. The Vice Chairman sent this second letter by certified mail, return receipt requested. In doing so, however, the Vice Chairman ignored the information apparently provided by the Director Employee Relations because the Vice Chairman failed to address the claim to the then incumbent Division Engineer.

At this point the record remains in dispute. The Carrier alleges that the Superintendent Mechanical & Engineering for the Cumberland Coal Business Unit denied the claim in a timely manner. The Organization contends that it failed to receive a denial. The Organization therefore reasons that Rule 16 requires that the claim be sustained. In contrast, the Carrier insists that it provided a timely denial that remained in effect. The Carrier adds that the Organization limited the progressing of the dispute on the property to the procedural argument and therefore the claim must fail on the merits.

Extensive arbitral precedent exists about many variations of disputes concerning the need to progress disputes in a timely manner. Resolving such disputes requires a meticulous analysis of the specific facts and circumstances set forth in the record.

In the present case, a careful and extensive review of the record indicates that the Organization initiated the claim by using certified mail, return receipt requested. The evidence substantiates that the Organization sent the claim in a timely manner to the office of the Division Engineer by certified mail, return receipt requested. The Carrier failed to respond in the same manner at its peril. As a consequence, the Superintendent Mechanical & Engineering for the Cumberland Coal Business Unit, by at best electing to send the denial letter by regular mail, failed to anticipate the possibility that a need might exist in the future to prove that he Engineer had actually sent the July 12, 1996 denial letter to the appropriate person in the Organization and that the Organization had actually received the July 12, 1996 letter. In the absence of such an ability to prove that the Carrier had effectuated a timely notification of denial, Rule 16 and the relevant arbitral precedent require the claim to be allowed as presented, but without being considered as a precedent or waiver of the contentions of the Carrier regarding other similar claims or grievances.

In reaching this conclusion, the Board recognizes that the Director Employee Relations initially made a good faith effort to advise the Vice Chairman of the proper method to progress the claim. Rule 16, however, does not authorize the Board to elevate such a noticeable good faith effort to a cognizable defense that excuses or offsets the failure of the Superintendent Mechanical & Engineering for the Cumberland Coal Business Unit to anticipate the need to have established an equivalent record by using certified mail, return receipt requested, to address a possible assertion by the Organization that it had not received an effective and timely notification of the denial of the claim.

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 24th day of October, 2001.