

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36106
Docket No. CL-36459
02-3-00-3-637**

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(CSX Intermodal Terminals, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12652) that:

The following claim is hereby presented to the Company in behalf of Claimant Mr. W. L. Foucht.

- (a) The Carrier violated the Clerks' Rules Agreement effective July 1, 1979, particularly Rules 1, 24, 40 and other rules, when it assigned and permitted an employee of Trans International to perform the duties of Gate Clerk by inspecting, writing the necessary documents and presenting to the driver for movement of outbound Mitsui chassis and containers on July 1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29 and 30, 1999, hours 3:00 p.m. to 11:00 p.m., located at the Trail-Van Terminal, Columbus, OH, and failed to call and use claimant Mr. W. L. Foucht to perform this work on dates listed.**
- (b) Claimant Mr. W. L. Foucht be allowed eight (8) hours pay at the appropriate punitive rate of pay for each day July 1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29, and 30, 1999 on account of this violation.**
- (c) Claimant is qualified, available and should have been called and used to perform this work.**
- (d) This claim has been presented in accordance with Rule 45 and must be allowed.**
- (e) Carrier is in violation of Rule 45(a) when it did not answer the claim within 60 days at the initial level.”**

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.

In this claim, the Organization alleges that the Carrier violated the applicable Agreement when it assigned an employee not covered by the Agreement to perform the duties of an Intermodal Service Representative by inspecting and writing necessary documents concerning the movement of outbound Mitsui chassis and containers at the Carrier's Trail-Van Terminal at Columbus, Ohio. The Organization further alleges that the Claimant, a covered clerical employee, should have been called to perform the disputed work. However, the Organization progressed the claim to the Board solely on the issue of time limits. Thus, the Board dismisses the merits of the claim for want of prosecution.

The record reflects that the Carrier received the claim on August 5, 1999. The Carrier's denial letter is postmarked October 4, 1999, the 60th day following the Carrier's receipt of the claim. The District Chairman received the Carrier's denial letter on October 5, 1999, the 61st day following the Carrier's receipt of the claim.

The issue in this case is, does the postmarked date on an envelope containing the Carrier's denial letter constitute the material date for purposes of applying the 60-day time limitation in Rule 45(a) of the Agreement?

The Board adjudicated an identical issue in Third Division Award 36095. We ruled that the Rule 45(a) time limitation runs from the date the Carrier received the claim until the date that the Organization receives the Carrier's denial letter. For the reasons more fully set forth in Award 36095, the Board held that the postmark on the envelope containing the Carrier's denial letter does not stop the running of the 60-day time limitation. Rather, to satisfy the limitation, the Carrier's denial letter must reach the Organization within 60 days after the Carrier receives the claim. Per Rule 45(a), the Board must sustain the claim as presented.

To reiterate, the merits of the claim are dismissed.

AWARD

Claim sustained in accordance with the Findings.

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 22nd day of July 2002.