Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36711
Docket No. CL-36794
03-3-01-3-312

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(CSX Intermodal Terminals, Inc. (former CSX/Sea-Land
(Terminals, Inc.) Fruit Growers Express Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-12741) that:

The following claim is hereby presented to the Company in behalf of Claimant Mr. Robert Reed.

(a) The Carrier violated the Clerks' Rules Agreement effective July 1, 1979, particularly Rules 24, 40 and other rules when it failed to call and work Claimant Mr. Robert Reed for position Intermodal Service Representative, Symbol 153, hours 7 a.m. to 3 p.m., located at the Intermodal Terminal, E. St. Louis, IL on April 28, 2000 and instead diverted clerks Charlie Martin and Ray Deering from their regular assigned positions and required them to fill the vacancy on position 153.

(b) Claimant Mr. Robert Reed must now be allowed eight (8) hours pay at the punitive rate of pay for April 28, 2000 on account of this violation.

(c) Claimant was available and should have been called and worked in accordance with Rules 24 and 40.

(d) This claim has been presented in accordance with Rule 45 and must be allowed.

(e) Claim further made that Carrier violated the provisions of Rule 45(a) relating to time limits."

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 claim, which was sent by certified mail dated May 15, was received by the Carrier on May 17, 2000. The July 12 declination letter, which was sent by certified mail on July 13 was received by the Organization on July 17, 2000. By these dates, the Carrier's denial was received by the Organization on the 61st day after the Carrier received the claim.

Rule 45(a) provides, in pertinent part:

* * *

"When a claim or grievance has been presented . . . and is denied, the Company shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative), in writing, of the reason for such disallowance. If not so notified, the claim or grievance will be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Company as to the other similar claims or grievances."

The parties have faced this issue before. In on-property Third Division Award 36095 the Board held:

> ". . . *the Board concludes that the claim should be resolved* by following the most significant precedent in the record before us. Award 10, Public Law Board No. 4304 (TCU vs. NRPC) interpreted language identical to the language contained in the applicable Agreement. In Award 10, the Board held that 'notify' means that the denial letter must be received by the person or organization filing the claim. The Board reasoned that notification cannot occur merely by dispatching the denial letter in the U.S. Mail. The Board determined that 'notify' means that the denial must be physically conveyed to the Organization. To bring predictability to their labor-management relationship, the parties should adhere to the precedent established under the time limit rule. . . .
>
> In accord with Award 10 and Rule 45(a), the instant claim must be sustained 'as presented' because the Organization did not receive the Carrier's denial letter until more than 60 days after the Organization presented the claim to the Carrier. . . ."

See also, on-property Third Division Awards 36096, 36097 and 36106 which followed Third Division Award 36095.

Under the authority of Third Division Award 36095 and those cited Awards following that decision, "[t]o bring predictability to their labor-management relationship, the parties should adhere to the precedent established under the time limit rule. . . ." Therefore, because the Carrier's denial was received by the Organization on the 61st day after the Carrier received the claim, the 60 day time limit provision in Rule 45 was not followed. On the basis of the above authority, the claim must be sustained as presented.

As we said in Third Division Award 34204:

> ". . . we cannot decide this case de novo, but we are required to defer to that prior Award. To do otherwise would be an invitation to chaos and would result in encouraging parties after receiving an adverse decision to attempt to place a similar future dispute before another referee in the hope of obtaining a different result."

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 17th day of September 2003.