

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40475
Docket No. SG-40070
10-3-NRAB-00003-070265
(07-3-265)

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of T. M. Baker, for three hours at his time and one-half rate of pay, account Carrier violated the current Signalmen's Agreement, particularly Rules 40, 44 and 80, when it failed to call the Claimant to assist on a trouble call and instead called an employee from another seniority district to work outside his seniority limits on February 26, 2006 for trouble on the siding at TC 640 and denied the Claimant the opportunity to perform this work. Carrier compounded this violation by failing to respond to the Organization's appeal within the 60-day time limit provisions of Rule 69. Carrier's File No. 1446623. General Chairman's File No. UPGCW-44-1237. BRS File Case No. 13741-UP.

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.

At the outset, the Organization maintains that the Carrier violated Rule 69 of the Agreement between the Parties when it did not adhere to the time limits provided therein. The Board reviewed the chronology of the case and concurs with the Organization. The original claim was filed on April 6, 2006. The Carrier denied the claim on May 26, 2006. The Organization appealed the denial on June 7, 2006 and sent its appeal by Priority Mail. The record indicates that the appeal was received by the Carrier on June 8, 2006. The Carrier again denied the claim in a letter bearing the date of August 8, 2006. That letter, according to the documentation on the record, was not mailed until August 9 and was not received by the Organization until August 14, 2006.

Rule 69 reads, in pertinent part, as follows:

“ . . . Should any such claim be disallowed, the Carrier will, 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 will be allowed as presented, but this will not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.”

The Board finds that the Carrier's response was not within the 60-day limit provided in the clear language of Rule 69. In the absence of any evidence that the Parties have had a mutually agreed to practice of laxity regarding the time limits under this Rule, we are in agreement with the Board's findings in Third Division Award 10173:

“Notification connotes communication of knowledge to another of some action or event. The method of communication in the instant case was left to the discretion of the party bearing the responsibility of notification and the Carrier apparently elected to use the regular first class mail service rendered by the [US Postal Service]. . . . It

was the responsibility of the Carrier to be certain that the letter of disallowance was properly delivered to the employee's Local Chairman."

Accordingly, we have no choice but to sustain the claim as presented without commenting on the merits.

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 14th day of May 2010.