

**Award No. 11505**

**Docket No. MW-10609**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**John H. Dorsey, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY  
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when, on or about July 1, 1957, it laid off the Crossing Watchman at Crawford Avenue, Parsons, Kansas and thereafter permitted and required said Crossing Watchman's work to be performed by individuals holding no seniority within the scope of the subject agreement.

(2) Failure of Assistant Chief Engineer J. H. Hughes to disallow claim presented in connection with the above mentioned violation requires that the claim, as presented under date of July 25, 1957, be allowed.

(3) Because of the violation referred to in Part (1) of this claim and because of the Carrier's inaction referred to in Part (2) of this claim, the following claim be allowed:

"600-101-C

July 25, 1957

**Mr. J. H. Hughes**  
Assistant Chief Engineer  
M-K-T Lines  
Dallas 2, Texas

Dear Sir:

Kindly accept this as a time claim for furloughed Crossing Flagmen for all time lost as a result of positions being abolished and protection being furnished by persons holding no seniority as Crossing Flagmen on Crawford and Corning Avenues, Parsons, Kansas, claim to run until positions are reinstated and Crossing Flagmen returned to service.

Will you kindly advise.

Yours very truly,

/s/ E. Jones  
E. Jones

EJ:mh”

**EMPLOYES' STATEMENT OF FACTS:** Since time immemorial, crossing protection over the Carrier's tracks at Crawford Avenue, Parsons, Kansas has been assigned to and performed by crossing watchmen who hold seniority within the scope of the Agreement here in question.

In fact, Ordinance No. 3587 of the City of Parsons, Kansas as amended by Ordinance No. 3634 requires that Crossing Flagmen be maintained at the "Crawford Avenue Railroad crossing" while permitting other crossings to be protected by other means, the ordinance reading:

**"ORDINANCE NO. 3634**

AN ORDINANCE amending Ordinance No. 3587 of the City of Parsons, Kansas, relating to railroad crossings, providing for certain regulations pertaining thereto, and repealing Section 1 of Ordinance No. 3587.

**BE IT ORDAINED BY THE BOARD OF COMMISSIONERS  
OF THE CITY OF PARSONS, KANSAS:**

**SECTION 1. Flagmen at Certain Crossings.** It shall be the duty of the Missouri-Kansas-Texas Railroad Company to keep and maintain a flagman at the Crawford Avenue Railroad crossing in the City of Parsons, Kansas, daily, between the hours of 8:00 A.M. and 1:00 P.M., and between the hours of 5:00 P.M. and 8:00 P.M., and such flagman shall be provided with the necessary signal equipment and shall stand at said crossings and notify and warn all persons approaching said crossings, or passing over the same, of the approach of engines, trains, or cars, by exhibiting danger signals as herein provided, and who shall exhibit signals when to proceed.

**SECTION 2. Safety Provisions for Corning Avenue Crossing.** It shall be the duty of the Missouri-Kansas-Texas Railroad Company to provide necessary employes to warn all persons using Corning Avenue crossing of all switching operations over and across Corning Avenue and such employes shall be provided with the necessary signal equipment to warn all persons of the approach of any switching operations.

**SECTION 3. Trains Standing on Crossings.** It shall be unlawful for any engineer, conductor, or other person having under his charge, control or management any railway engine, cars, or train to cause or permit the same to obstruct any street or avenue in this City in such a manner as to prevent the use of such street or avenue for purposes of travel for a period of time longer than ten minutes at any one time, except that this provision shall not apply to trains or cars in motion, other than those engaged in switching.

The Carriers request ample time and opportunity to reply to any and all allegations contained in Employees' and Organization's submission and pleadings.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, deny each and every, all and singular, the allegations of the Organization and Employees in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, respectfully request the Third Division, National Railroad Adjustment Board, deny said claim and grant said Railroad Companies, and each of them, such other relief to which they may be entitled.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On July 10, 1957, Carrier abolished the position of Crossing Watchman at Crawford Avenue, Parsons, Kansas, and laid off the watchman.

Petitioner alleges that it deposited in the United States mail a letter under date of July 25, 1957, stamped and correctly addressed to Carrier's Assistant Chief Engineer. In the letter, a copy of which is in the record, Petitioner claimed that the watchman's job was abolished in violation of the Agreement.

Petitioner, not having received a reply to its July 25 letter, wrote to Carrier's Chief Engineer, under date of October 14, 1957, advising him that it had not received a reply and demanding that the claim be allowed, as presented, since it was not disallowed within 60 days in compliance with Article V 1. (a) of the National Agreement of August 21, 1954. The Carrier replied that Petitioner's July 25 letter had not been received.

Carrier takes the position that the claim is barred because Petitioner failed to file it within 60 days of the occurrence (July 10) as required by Article V 1. (a) of aforesaid National Agreement.

The issue is whether Petitioner timely filed the claim. It asserts that depositing the claim in the mails, correctly addressed and stamped constitutes presenting the claim. Petitioner says that since its return address was impressed on the envelope containing the July 25 letter, and said letter was not returned to it, this is evidence that the addressee did in fact receive the letter.

There can be no dispute that by application of Article V 1. (a) a claim, such as the instant one, is barred if within 60 days of the occurrence, upon which it is founded, it has not been presented, in writing, to Carrier; and, presentation can only be accomplished by Carrier's receipt of the writing.

It is a general principle of the law of agency that a letter properly addressed, stamped, and deposited in the United States mail is presumed to have been received by the addressee. But, this is a rebuttable presumption. If the addressee denies receipt of the letter then the addressor has the burden of proving that the letter was in fact received. Petitioner herein has adduced no proof, in the record, to prove *de facto* receipt of the letter by the Carrier.

The perils attendant to entrusting performance of an act to an agent are borne by the principal.

Upon the record before us we find that Petitioner has not proven that it presented the claim, to Carrier, within the time limitation agreed to by the parties; and, in the absence of such proof the claim is barred. We are compelled to dismiss.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claim was not presented to Carrier within the time limit prescribed in Article V 1. (a) of the August 21, 1954 National Agreement; and, therefore, the claim is barred.

#### AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 13th day of June 1963.