# Award No. 16370
# Docket No. MW-16991

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

John J. McGovern, Referee

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## PARTIES TO DISPUTE:

## BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

## CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it failed and refused to reimburse Mr. B. R. Simons for expenses incurred in movement of household goods from Zeandale to Clyde, Kansas.
(System File L-126-917/4-E-51.)

(2) Mr. B. R. Simons now be reimbursed in the amount of $76.80 because of the above mentioned violation.

EMPLOYES' STATEMENT OF FACTS: Prior to December 8, 1965, the claimant was the foreman of the gang assigned to Section No. 360, with headquarters at Zeandale, Kansas. On December 8, 1965, the claimant's position was abolished. He subsequently obtained a position in the maintenance gang with headquarters at Riley, Kansas but was displaced from that position on December 21, 1965. The claimant then exercised his seniority rights to a position in Maintenance Gang No. 8, with headquarters at Clyde, Kansas. Inasmuch as Clyde, Kansas is located more than forty (40) miles from Zeandale, Kansas, it was necessary for the claimant to move his residence from Zeandale to Clyde.

The claimant engaged the services of the Topeka Motor Freight Company to transport one truck load of his furniture to his new residence on January 8, 1966. On the same date the claimant made two round trips with an automobile and trailer to transport additional household goods. On January 9, 1966, he made two additional round trips with an automobile and trailer for the same purpose. The claimant also made one round trip with a borrowed pickup truck on January 9, 1966 to complete the movement of his household goods.

Because the claimant moved from the territory of one division engineer to the territory of another division engineer, he was uncertain to whom he should address his request for reimbursement of the expenses he incurred in moving his household goods. Consequently, the claimant addressed similar letters to the assistant division engineer of the Des Moines Division and to the assistant division engineer of the Missouri-Kansas Division, reading:

**OPINION OF BOARD:** Claimant was the foreman of the gang assigned to Section No. 360, with headquarters at Zeandale, Kansas. On December 8th, 1965, the Claimant's position was abolished. He later obtained a position in the Maintenance gang with headquarters at Riley, Kansas, but was displaced from that position on December 21, 1965. He then exercised his seniority rights to a position in Maintenance Gang No. 8, with headquarters at Clyde, Kansas. Since the distance from Zeandale to Clyde, Kansas was more than 40 miles, Claimant decided to move, and in the process incurred moving expenses as follows: $40.00 for the services of the Topeka Motor Freight Company; $28.80 for the use of an auto and trailer for four trips; and $8.00 for one trip with a pick-up truck. The payment of the bill was refused by the Carrier. Claimant contends that by its refusal, Carrier has violated Rule 41 of the Agreement. This Rule reads

"RULE 41.

TRANSFERRING HOUSEHOLD GOODS

> Employes transferred by direction of the Management to positions which necessitate a change of residence, will receive free transportation for themselves, dependent members of their family, and household goods, when it does not conflict with State or Federal regulations. This will apply to employes transferred in the exercise of their seniority rights to the extent of not more than once in twelve months."

The Claimant, having moved from the territory of one division engineer to the territory of another division engineer, was uncertain as to whom he should send his request for reimbursement. He therefore addressed similar letters to th Assistant division engineer of the Des Moines Division and to the Assistant division engineer of the Missouri-Kansas division.

The Carrier maintains that we should deny this claim on the grounds that first it was not appealed within the applicable time limits, and second that the claim is now before this Board without it having been discussed in conference with Carrier at the highest level of handling on the property. Hence Carrier concludes that this Board lacks jurisdiction.

We will address ourselves to the first defense, namely that the claim was not appealed to Carrier's highest officer within the period allowed by the time limit rules. The Employes admit receipt of the disallowance of the claim by Superintendent Hurt on May 23, 1966. They admit they did not mail an appeal letter until July 21, 1966 (the 59th day).

Carrier denies that it received the letter with the 60-day time limit. In order to support their position that appeal was taken within 60 days, as required by Article V of the Agreement of August 21, 1954, the Employes base their case expressly on the theory that the time should be computed from the date of mailing, and therefore they should not be charged with the period of time that the letter was in the hands of the post office. They state their position as follows:

> "The aforequoted Award 14695 also fully refutes the Carrier's erroneous contention that the time limits were not satisfied when the General Chairman's letter of July 21, 1966 was mailed to the Carrier's highest appellate officer on said date. Time limits begin to run upon receipt of the letter (of appeal or decision and **the time limits are**

**satisfied when the letter (of appeal or decision) is mailed within the contractual time limits."**

As authority for the point that time consumed while a letter is in transit is to be disregarded in computing the time limit, the Employes cite Awards 11575 and 14695 as well as the Awards therein cited. They quote with emphasis the following extract from Award 14695:

> "The National Disputes Committee Decision No. 16, dated March 17, 1965, incorporated into Award 13780, held that the claim should be considered 'filed' on the date received by the Carrier. Consequently, the date of receipt determines the 60 day time limit, which commences to run from that date. Subsequent Awards have held that the Carrier must stop the running of the time limit **by mailing or posting the notice required within the 60 days** of the date that the claim was received. (Award 11575 and Second Division Award 3656.) Here, the Carrier responded to the appeal within the sixty day period and the dispute is properly before us on its merits."

If this Board is to resolve disputes regarding mailing and receipt of letters of appeal or disallowance, we must ultimately rely upon and accept the statements of the parties themselves. Some of the cases have suggested that other evidence such as registration receipts and postmarked envelopes should be submitted by the parties to establish mailing. But where there is a constant flow of mail between the parties, as is the usual case with a Carrier and any large Organization representing its employes, such evidence is meaningless because it is a matter of common knowledge that envelopes are passing through the mails between the parties constantly. The significance that may properly be given to a registered letter in the usual legal proceedings where parties are not constantly corresponding and therefore would have no reason to correspond other than for the purpose of giving the particular notice is lost in these cases where the parties constantly correspond about many subjects. Many of the disagreements here concern the specific contents of a particular envelope. The fact that a particular envelope was registered or preserved with its postmark has no tendency whatever to establish the contents thereof in these cases. The contents of an envelope, and not the mailing thereof, is the vital ultimate fact in any case and on that ultimate fact there is no evidence available other than the statements of the parties.

We are convinced the cause of justice and the rights of all parties will be best served by adhering to the views advanced by Judge Stone as Referee in Second Division Award 3541 and Judge Hall in Third Division Award 11575, where it was ruled:

**AWARD 3541 (Stone)**

> "This presumption being that both parties are telling the truth, we find that Carrier gave timely notices of disallowance of claim as required by the Time Limit Rule and that the local chairman failed to receive them, so neither is in default under the rule."

**AWARD 11575 (Hall)**

> "It is readily apparent, therefore, that the length of time consumed while the appeal or the denial decision was not in transit could not be chargeable to either of the parties. See Award 10490."

We find that the Employes are telling the truth in this case and since they mailed their appeal letter within 60 days from the date disallowance was received, their appeal was timely.

The second defense raised by the Carrier, that a conference was not held by the parties at the highest level on the property for the purpose of discussing this claim before submission to this Board, is dispositive of the case. This most assuredly is not a new issue, since it is one with which we have been confronted on a number of occasions. We have rendered consistent awards, as have others, to the effect that a conference between the parties in a spirit of "bona fides" to settle the claim on the property is a jurisdictional requirement. The employes in the face of many such awards, urge upon us first, that a conference is not jurisdictional, citing principally Award 10139, as well as the decision of a Federal District Court sustaining Award 10139. This award and the decision of the Court are distinguishable from the instant case in that conferences on the property were not a part of the "usual manner" of handling claims. We therefore reaffirm our previous decisions which have held that since no conference was held on the property in conformity with Section 2, First, Second and Sixth of the Railway Labor Act, and Section 3, First (i) of the Act, the Board lacks jurisdiction. We will dismiss the claim.

**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 Employes involved in this dispute are respectively Carrier and Employes 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.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June 1968.

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