



Award No. 16537
Docket No. SG-17259

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company:

On behalf of Signal Maintainer H. L. Martin for twenty-four (24) hours' pay at the punitive rate of pay for monthly-rated Signalman for December 11, 1965, because claim for this amount was initiated January 17, 1966 and not declined by Carrier within the time limit provisions of Rule 701(a) of the current Signalmen's Agreement. (Carrier's File: B 225-492.)

EMPLOYEES' STATEMENT OF FACTS: This dispute arose because Carrier called Claimant Martin to perform work on December 11, 1965, one of his vacation days.

On January 17, 1966, the Brotherhood's Local Chairman filed a claim with Carrier's Superintendent, Mr. G. W. Stone, on behalf of Mr. Martin for twenty-four (24) hours' pay at the punitive rate, on the basis Carrier violated the Vacation Agreement.

As the Local Chairman did not receive a timely reply from the Carrier in accordance with Rule 701(a) of the Signalmen's Agreement, the General Chairman wrote to the General Manager on August 20, 1966, and asked that the claim be paid because of Carrier's failure to render a timely decision.

In response, the General Manager asserted Carrier had been unable to locate any record of ever having received the claim.

In reply to that assertion, the General Chairman wrote to the General Manager and reminded him that the claim had been a topic of discussion earlier in the year (1966). The General Manager then offered to pay Mr. Martin eight (8) hours' punitive pay in settlement of the claim, but the General Chairman insisted on the full amount originally claimed (24 hours' punitive pay).

The claim was subsequently handled on the basis of the procedural issue, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving satisfactory settlement. Pertinent exchange of

Since no valid claim has ever been presented, as required by the rules, there was no obligation resting upon the Carrier to decline it; accordingly, your demand that additional allowance be made to the claimant on the basis of the time limit rule is without agreement support.

Without, in any manner whatsoever, changing the Carrier's position as set forth above, investigation develops that Signal Maintainer H. L. Martin, regularly assigned as such, and compensated on the basis of the monthly rate, was absent on vacation during the period November 15 to and including December 12, 1965, and on December 11, 1965, was requested to, and did, report account of signal failure, and performed service for the Carrier from 12:05 A. M. to 4:05 A. M. to correct the signal trouble. While work other than ordinary maintenance and construction is comprehended in the monthly rate on the sixth day of the work week, in view of the fact that service was performed by Signal Maintainer Martin on a day of vacation, he has been additionally compensated for four hours' service performed at the time and one-half rate amounting to \$15.97 in full compliance with applicable provisions of the Agreement. In no event can there be any basis for additional compensation beyond the hours of service performed.

In view of the foregoing, this is to advise you that no valid claim has been presented to the Carrier as contemplated by the provisions of the Agreement referred to above; therefore, there is no basis for allowance of the claim as contended by you. Notwithstanding the foregoing, however, the claimant has been properly compensated for services rendered on December 11, 1965.

Claim for additional allowance is hereby declined.

Yours truly,

/s/ O. B. Sayers

cc: Mr. C. S. Chandler"

The claim was discussed in conference with the General Chairman on January 7, 1967, and under date of February 9, 1967, the Director of Labor Relations confirmed the conference, advising the General Chairman that the decision given to him in his letter of December 2, 1966, was affirmed and that the claimant was not entitled to any additional compensation.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier called Claimant to perform work on December 11, 1965, one of his vacation days. On January 17, 1966, the Brotherhood's local Chairman filed a claim with Carrier's officer for 24 hours' pay at the punitive rate, on the basis Carrier violated the Vacation Agreement. The Local Chairman did not receive a reply from the Carrier and claims a violation of Rule 701(a) of the Agreement in view of the sixty day time limit.

Carrier retorts that the claim was never received, hence no answer was required and no violation occurred. We agree with Award 11505 (Dorsey),

wherein it was stated "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 has adduced no proof, in the record, to prove de facto receipt of the letter by the Carrier."

Although Petitioner in this case has presented some evidence in the form of affidavits, we do not find that it is sufficiently persuasive or substantial to state categorically that the burden of proof has been met by the Petitioner. We will dismiss the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 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 2nd day of August 1968.

DISSENT TO AWARD NO. 16537, DOCKET SG-17259

Unless there is reason to question the honesty of those making the Petitioner's affidavits, and there was none here, we cannot understand how a bald assertion by the Respondent can prevail against them and the Petitioner be held not to have met his burden of proof.

Award No. 16537 is in error and I dissent.

W. W. Altus
For Labor Members

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