

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21088
Docket Number CL-21274

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Houston Belt & Terminal Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, GL-7923, that:

1. Carrier violated the Clerks' Agreement when Carrier officers failed to render decision within the sixty (60) day time limit prescribed by Rule 28.

2. The Carrier shall be required to compensate claimants as follows: (a) F.D. Rivers for eight (8) hours at the punitive rate of Chief Yard Clerk 559, or \$66.57 per day, each day July 14, 16, 17, 18, 21, 22, 23, 24, 25, 28, 31; August 1 and 2, 1974.

(b) C. J. Butaud, eight (8) hours at the pro rata rate of Route Clerk, or \$42.60 per day, each day July 12 and 14, 1974.

(c) E. P. Teague, eight (8) hours at the punitive rate of Counter-man, or \$56.72 per day, July 4, 1974.

(d) Judy A. Hodges, eight (8) hours at the pro rata rate of Key-punch Operator, or \$41.37 per day, July 7, 1974.

(e) John G. Lusk, eight (8) hours at the pro rata rate of PICL Clerk, or \$43.51 per day, July 10, 1974.

OPINION OF BOARD: This issue in this dispute is whether or not the time limit provisions of the Agreement were complied with. Rule 28 provides in pertinent part:

"1. All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, 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 shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

With respect to Claimants Rivers, Butaud, Teague and Lusk there is no evidence of delivery or receipt of denials of the claims. No letters or copies of letters of denial were furnished to Petitioner during the handling on the property and no proof whatever of delivery of any such denials was furnished during the handling on the property. All Claimants deny ever having received declinations of their claims. Carrier maintains that denials were timely sent through its internal mail system, as was customary.

With respect to Judy Hodges' claim, Carrier has taken the consistent position that no claim was ever received from her. Other than her own statement, Petitioner has furnished no evidence that this claim was indeed filed. A copy of the alleged claim was appended to correspondence by Petitioner (letter dated October 8, 1974 from the District General Chairman).

In a closely related dispute, Award 15517, involving the same parties, we held that it was Carrier's responsibility to ensure receipt of disallowances of claims. Also, see Award 14354 among many others.

Based on the circumstances herein, and the language of Rule 28, Carrier is required to allow the claims of Rivers, Teague, Butaud and Lusk as presented, without consideration of the merits. The claim of Hodges will be denied for lack of proof of its filing.

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 Agreement was violated.

A W A R D

Claims 1, 2 (a), (b), (c) and (e) sustained; Claim 2(d) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1976.