NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21179
Docket Number SG-20967

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Pacific Transportation Company
((Pacific Lines)

STATEMENT OF CLAIM: Claims of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (Pacific Lines):

Claim No. 1:

(a) That the Southern Pacific Transportation Company (Pacific Lines) violated the Agreement between the Company and the employes of the Signal Dept. represented by the Brotherhood of Railroad Signalmen effective April 1, 1947 (reprinted April 1, 1958 including revisions) and particularly the Scope Rule which resulted in violation of Rule 70.

(b) That claimants CTC Foreman R. A. Fraga, Lead Signalman W. T. Buehling, Signalman R. K. Liggett, Signalman C. W. Hampton, Assistant Signalman R. Williams, and Signal Maintainer C. I. Young, Shasta Seniority District, Oregon Division be allowed eight hours pay at their respective straight time rate of pay for each of the following dates and locations:

August 15, 1973	West End Mt. Shasta	8 hrs. each
August 16, 1973	West End Mt. Shasta	8 hrs. each
August 17, 1973	West and East End Mt. Shasta	8 hrs. each
August 21, 1973	West and East End Mt. Shasta	8 hrs. each
August 22, 1973	West and East End Mt. Shasta	8 hrs. each
August 23, 1973	East End Mt. Shasta	8 hrs. each
August 24, 1973	West End Mt. Shasta	8 hrs. each
August 27, 1973	East end Azalea	8 hrs. each
August 28, 1973	East end Azalea	8 hrs. each
August 29, 1973	West end Mott	8 hrs. each
August 30, 1973	West end Mott	8 hrs. each
August 31, 1973	East end Mott	8 hrs. each

A total of 96 hrs. each per claimant.

/Carrier's file: SIG 152-3287

Claim No. 2:

(a) That the Southern Pacific Transportation Company (Pacific Lines) violated the agreement between the Company and the Employes of the Signal Dept. represented by the Brotherhood of Railroad Signalmen effective

April 1, 1947 (reprinted April 1, 1958 including revisions) and particularly the Scope rule which resulted in violation of Rule 70.

(b) That claimants CTC Foreman R. A. Fraga, Lead Signalman W. T. Buehling, Signalman R. K. Liggett, Signalman C. W. Hampton, Assistant Signalman R. Williams, and Signal Maintainer C. I. Young, Shasta Seniority District, Oregon Division, be allowed eight hours pay at their respective straight time rates for work performed by employes not covered by the Signalmen's Agreement for each of the following dates and locations:

Sept. 4, 1973	East end Mott and West end Azalea	8 hrs. each
Sept. 5, 1973	East end Mott and West end Azalea	8 hrs. each
Sept. 6, 1973	East end Mott and West end Azalea	8 hrs. each
Sept. 7, 1973	East end Mott and West end Azalea	8 hrs. each
Sept. 10, 1973	East end Mott and West end Azalea	8 hrs. each
Sept. 11, 1973	East end Mott and West end Azalea	8 hrs. each
Sept. 12, 1973	East end Mount Shasta	8 hrs. each
Sept. 13, 1973	East end Mott and West end Azalea	8 hrs. each
Sept. 14, 1973	East end Mott and West end Azalea	8 hrs. each
Sept. 24, 1973	West and East end Mt. Shasta	8 hrs. each
Sept. 25, 1973	West and East end Mt. Shasta	8 hrs. each
Sept. 26, 1973	West and East end Mott	8 hrs. each
Sept. 27, 1973	West end Azalea and East end Mott	8 hrs. each

Mr. W. T. Buehling, R. K. Liggett, C. W. Hampton and R. Williams for the following dates.

Sept. 17, 1973	West end Mott and West end Azalea	8 hrs. each
Sept. 18, 1973	West end Mott and West end Azalea	8 hrs. each
Sept. 19, 1973	East end Azalea	8 hrs. each
Sept. 20, 1973	West end Azalea and East end Mott	8 hrs. each

/Carrier's file: SIG 152-3292/

Claim No. 3:

(a) That the Southern Pacific Transportation Company (Pacific Lines) violated the Agreement between the Company and the Employes of the Signal Department, represented by the Brotherhood of Railroad Signalmen, effective April 1, 1947 (reprinted April 1, 1958 including revisions) and particularly Rule 16 which resulted in violation of rule 70.

(b) That Mr. Poulson be allowed seven (7) hours at his overtime rate for July 22, 1973 account not called for signal trouble on his assigned district.

/Carrier's file: SIG 148-229/

OPINION OF BOARD: The employes have progressed this claim entirely on a procedural issue, rather than on the merits. It is their contention that Carrier did not give the General Chairman timely notice of the decision of Carrier's highest officer. The General Chairman advised Carrier by telephone on February 7, 1974 that he had not received a denial of the claim. Carrier advised him that a letter, dated January 24, 1974, denying the claim had been mailed on that date. Carrier furnished a copy of the letter, which included the stamped notation "copies mailed January 24, 1974".

The cases dealing with this issue have not been uniform in their holdings. The employes took the position on the property that Carrier was obliged to insure receipt of the notice of denial within the 60-day period. Carrier has relied upon a line of cases which holds that placing notice in the mail within the 60-day period so that it should be received before the time limits had run, satisfied the obligation under the Rule.

Carrier recognizes that it must prove that it fulfilled that obligation and takes the position that it did so when it furnished the General Chairman a copy of its denial notice which indicated that it had been mailed on January 24, 1974. On the property the employes never took issue with Carrier's asserted mailing. Although Carrier had the burden of proving its mailing, once it presented its affirmative defense it was up to the organization to take issue with that defense if they had grounds for doing so. As the record stands, Carrier has carried its burden of proving that it mailed notice of denial on January 24, 1974.

The failure to deliver lay, not with Carrier, but with the Postal Service. Such a failure is not chargeable to a party where the practice has been to use the mails for giving notice and the notice was mailed in time to reach the other party within the time limits.

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 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; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 13th day of August 1976.