

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22531  
Docket Number MW-22376

William M. Edgett, Referee

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees  
(  
(Southern Pacific Transportation Company  
( (Pacific Lines)

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

(1) The claim in favor of H. Q. Rodriguez (S.S.#556-34-6451), as presented on appeal to Labor Relations Officer D. C. Taylor in a letter dated November 4, 1976, be allowed as therein presented because decision thereon was not tendered in conformance with the provisions of Sections 1(a) and 1(c) of Agreement Rule 44 [System File MoFW 148-411].

(2) Notwithstanding and without prejudice to (1) above, the aforesaid claim in favor of H. Q. Rodriguez be sustained on its merits."

OPINION OF BOARD: Carrier mailed a letter on January 26, 1977 denying H. Q. Rodriguez' appeal following a conference on January 25. The General Chairman advised Carrier in May, 1977 that he had not received Carrier's letter of denial. Carrier reproduced a copy of the letter from its file and hand delivered it to the General Chairman. In July, 1977 the General Chairman asked that the claim be allowed as presented, taking the position that Carrier's decision was untimely rendered.

The Agreement does not specify the use of registered or certified mail, and the practice has been to use the regular mail. Carrier has an obligation to prove that it mailed the letter to place it in line for timely receipt, and the Board is satisfied that it has met that obligation. It is clear that the lack of timely receipt was due solely to the failure of the Postal Service to deliver the letter. It was lost in the mail.

In some decisions the Board has indicated that party must insure receipt, and in order to do so should use registered or certified mail. This is an unreasonable imposition upon them. If they choose to undertake the direct and administrative expense necessary to monitor the

constant flow of correspondence between them, then the Board should recognize their choice. If they choose to avoid the expense of tracking each letter they exchange, then the Board should recognize that choice. When the parties have decided to use the regular mails then neither of them should be charged with the failure of the Postal Service to deliver a letter.

Here the parties have followed the practice of using the regular mail. Carrier has established that it mailed its letter of denial in timely fashion. Carrier did all that it could do under the system jointly chosen by the parties. To hold it responsible for the failure of the postal service would be unrealistic.

Award No. 20724, which involved these parties, settled the points raised by the organization on the merits in this case. There the Board said:

"This Board has held over many years that Management has the right to determine the fitness and ability of an employee for a particular position and such determination will not be disturbed unless it can be shown by a preponderance of evidence that Carrier acted arbitrarily and capriciously. Such evidence is lacking in this dispute, even under the special provisions of Rules 7 and 8. It must be noted that promotion to supervisory positions is of particular importance to Carriers and the skill and ability demonstrated in a class within the group does not necessarily qualify an employee for supervision; leadership and supervisory aptitude, at very least, are generally required. Carrier's failure to give proper notice under Rule 8 (c) is not sufficient to overcome Petitioner's omission of any probative evidence to support its allegations. The claim must be denied."

The Board will follow Award No. 20724 and deny 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 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 28th day of September 1979.