

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25100
Docket Number MW-25177

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Kansas City Southern Railway Company

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

(1) The Carrier violated the Agreement when it assigned outside forces to unload crossties on February 8, March 9 and 10, 1982 on the Arkansas Western (Carrier's File 013.31-260).

(2) The claim as presented by First Vice-Chairman R. T. Arnold on April 5, 1982 to Division Engineer T. L. Barker shall be allowed as presented because said claim was not disallowed by Division Engineer T. L. Barker in accordance with Rule 14-1.

(3) As a consequence of either or both (1) and/or (2) above, Trackmen P. D. Foresee and T. L. Clubb shall each be allowed

'a total of 17-1/2 hours at their respective straight time rate of pay.'"

OPINION OF BOARD: By letter dated April 5, 1982 a pay claim was filed by the Organization with the Carrier on behalf of the Claimants on the grounds that the Carrier allegedly violated Rule 2 of the working Agreement when it used a contractor to unload ties on the Arkansas Western on three (3) different days in February and March of 1982. The claim was for seventeen and one-half (17.5) hours, at straight time rate of pay, for each of the Claimants. On July 2, 1982 the First Vice Chairman of the Organization sent a second letter to the same Carrier Division Engineer with whom the claim had been initiated on April 5, 1982. In the July 2, 1982 letter the Organization requested payment of the claim not only on merits, but also on procedural grounds since it alleged that the Carrier had been in default of the time-limit provisions found in Rule 14-1-b of the current Agreement. These provisions stipulate that claims must be filed within sixty (60) days "of the occurrence on which the claim or grievance is based", and that such claim or grievance must be responded to in writing within sixty (60) days of the "date same is filed", or "be allowed as presented".

On July 9, 1982 the Carrier's Division Engineer responded to the Organization's July 2, 1982 letter. In this response the Division Engineer explained that a letter of declination had been sent on May 25, 1982, a copy of which was attached. After further appeal by the Organization up to and including the highest Carrier officer designated to hear such, this case is now before the Third Division of the National Railroad Adjustment Board.

Irrespective of the merits of the instant case the record shows conflicting evidence with respect to the procedural issue raised. The Organization claims that it never received the Carrier's first declination letter dated May 25, 1982 and the Carrier claimed that the letter was sent. The latter produced a copy of the letter from its files which it sent to the Organization on July 9, 1982.

When dealing with issues such as this the Board must rely on both precedent and substantial evidence of record. There is considerable precedent emanating from this Board, by means of prior Awards, wherein the Board has held that it is the responsibility of Carriers to be certain that letters of declination are properly delivered to the appropriate Organization officer under Agreement time rules (Third Division 10173; 11505; 14354; 16163). With respect to substantial evidence, which has been defined as such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Consol. Ed. Co. vs Labor Board 305 U.S. 197, 229), this Board has ruled in the past that statements alone on the part of Carriers to the effect that letters have been mailed do not sufficiently meet the evidence test even when copies are produced and even, which evidence is lacking in the instant case, when copies are "stamped as timely received by Carrier's supervisory personnel" (Third Division 17291; also Third Division 10173; 10742).

On procedural grounds, therefore, the claim must be sustained. Objection by the Carrier that the Claimants named in this case are not the proper ones because others had a better right is dismissed. Such objection does not relieve the Carrier of penalties arising from the violation of the Agreement (Third Division 18557).

Trackmen P. D. Foresee and T. L. Clubb shall each be allowed a total of seventeen and one-half (17.5) hours at their respective straight time rate of pay.

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

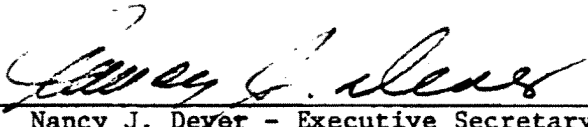
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1984.