

I. M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(National Railroad Passenger Corporation (Amtrak) -
(Northeast Corridor

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

(1) The claim* as presented by Local Chairman Jed Dodd on March 11, 1980 to Division Engineer John Pinghero shall be allowed as presented because the claim was not disallowed by Assistant Chief Engineer G. E. Ellis (appealed to him on May 12, 1980) in accordance with Sections (a) and (c) of Rule 64 (System Docket 182).

*The letter of claim will be reproduced within our initial submission."

OPINION OF BOARD: This dispute was presented solely on the basis of procedural contentions by Petitioner. Rule 64 (c) of the Agreement provides as follows:

"Rule 64

CLAIMS FOR COMPENSATION - TIME LIMITS FOR FILING

(c) If a disallowed claim or grievance is to be appealed, such appeal be in writing and must be taken within sixty (60) days from receipt of notice of disallowance, and the representative of AMTRAK shall be notified in writing within that time of the rejection of his decision. Failing to comply with the provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employees as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the sixty (60) day period for either a decision or appeal, up to and including the highest officer of AMTRAK designated for that purpose."

The Claim herein was filed on March 11, 1980 and was denied by the Division Engineer by letter dated March 21, 1980. The appeal by the Organization, addressed to the Assistant Chief Engineer Track was dated May 12, 1980 and was received (according to Carrier) on May 29, 1980. There was no response from the Assistant Engineer Track and by letter dated April 2, 1981 the Claim was progressed further by Petitioner primarily on procedural grounds.

The Organization argues that the appeal was timely presented on May 12, 1980 and was never disallowed. The major thrust of the argument is that the time limits in which Petitioner must present a claim or "take" an appeal is stopped by the mailing of the claim, appeal or decision. Thus, according to the Organization, the rule mandates the claim be sustained due to Carrier's failure to timely respond to the appeal.

The Carrier, contrary to the above, alleges that the first error was committed by Petitioner in failure to timely appeal the claim. Thus, Carrier's lack of response was moot, it is argued, since the appeal was improper as untimely filed.

The record indicates no evidence whatever to establish when the critical letter dated May 12, 1980 was mailed: no certification; no statement as when posted; and finally no envelope indicating post mark. The only objective evidence (in addition to the date on the letter) is Carrier's date stamp of receipt showing a seventeen day gap from the date of the document. The date stamp would establish that the letter was some 8 days late as provided by Rule 64 (c). Ordinarily, the date a document is deposited in the U.S. Mails would be sufficient to at least lock in the date the action was initiated in disputes based solely on the date received as evidenced by the date stamps.

Over the years many claims similar to that herein have been considered by this and other Boards; well grounded principles have been established. National Disputes Committee No. 16 held that the Claim should be considered filed on the date received by the Carrier. Similar reasoning has been applied to the sixty day period with regard to the various appeal steps (see among many awards 3rd Division Award 14695 and 2nd Division Award 9029). As a further element of principle, it is also well established that an original defect in perfecting the processing of a claim renders irrelevant or moot further later alleged defects (see Award 16164 and 15631 for example). In this dispute the facts indicate that the letter of appeal dated May 12, 1980 was not received within the time frame specified in Rule 64 (c) and in accordance with the principles cited supra the Claim must be dismissed.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1985.

