

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26549

Docket Number MW-26338

Elliott H. Goldstein, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Consolidated Rail Corporation

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

The claim* as presented by District Chairman M. J. Hagarty on June 2, 1983 to Division Engineer E. J. Sykora shall be allowed as presented because the claim was disallowed by Division Engineer E. J. Sykora in accordance with Rule 26(a) (System Docket CR-612).

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

OPINION OF BOARD: At issue before this Board is whether the instant Claim is procedurally defective. Rule 26(a) of the controlling Agreement states:

"RULE 26 - CLAIMS AND GRIEVANCES

(a) A claim or grievance must be presented, in writing, by an employee or on his behalf by his union representative to the Division Engineer or other designated official within sixty (60) days from the date of the occurrence on which the claim is based. The Division Engineer or other designated official shall render a decision within sixty (60) days from the date same is filed, in writing, to whoever filed the claim or grievance (the employee or his union representative). When not so notified, the claim will be allowed."

(Emphasis supplied)

The Claim herein, dated April 9, 1982, was received by the Carrier on June 2, 1982. Throughout the handling of this case on the property, the Organization maintained that the Claim originally had been mailed on April 14, 1982, but it was returned to the General Chairman by the Post Office because it was incorrectly addressed.

In its Statement of Claim, the Organization alleged that Carrier failed to properly recall the Claimant from furlough status. Although there is no indication from the Claim itself as to when the alleged violation occurred, it is undisputed, as subsequently determined through the parties' discussions, that Claimant alleged that he should have been returned from furlough on March 8, 1982.

There was no response to the Claim by the Carrier and by letter dated October 24, 1983, the Organization submitted that it should be allowed as presented as a result of this contractual violation.

Before this Board, the Organization asserts that the appeal was timely presented and that Carrier violated the Agreement when it did not disallow same within sixty days from the date of filing. Carrier on the other hand argues that the initial error was committed by the Organization in failing to timely file the Claim within sixty days of the alleged occurrence. Further, Carrier insists that it did respond to the Organization's Claim by letter dated August 3, 1982. The letter, submitted to the Board by the Carrier as Exhibit B, requests that the employees produce sufficient information to enable Carrier to answer the Claim. Thus, Carrier concludes that the Claim must be dismissed.

After a careful review of the record before us, this Board finds the position of the Carrier well founded. Rule 26(a) requires that a Claim be presented within sixty days from the date of the occurrence on which the Claim is based. The record in this case indicates no evidence whatever to establish that the Claim was filed within sixty days from March 8, 1982. Though the Organization submitted that it initially mailed its letter of Claim on April 14, 1982, there is no certification or envelope indicating post mark in the record to support that assertion. The only objective evidence is Carrier's date stamp of receipt showing that it was received on June 2, 1982.

It is a well-established principle that a claim should be considered filed on the date received by the Carrier. (See, as one example, Third Division Award 25208). In this dispute, the facts indicate that the letter of Claim was not received within the time frame specified in Rule 26(a). Since the Claim was not properly filed in the first instance we do not reach the question as to whether Carrier's response was timely nor do we reach the merits of this dispute. Numerous Awards have held that where, as here, no valid Claim existed ab initio, the Board may not consider Carrier's later procedural error or the merits of the Claim. See Third Division Awards 9684, 10532, and 16164. Accordingly, we must rule to dismiss this 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 Claim is barred.

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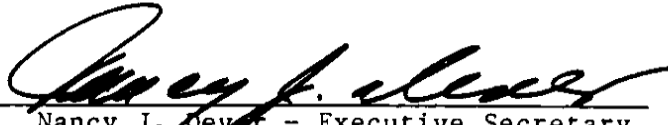
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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1987.

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