NATIONAL RAILROAD ADJUSTMENT BOARD

<div align="center">Award Number 26675</div>

THIRD DIVISION   Docket Number MW-26292

Irwin M. Lieberman, Referee

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company (Northern Region)

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

        1. The Carrier violated the Agreement when it refused to permit Track Laborer M. A. Wagner to displace a junior track laborer at Bangor, Michigan beginning August 1, 1983 (System File C-TC-1684/MG-4311).

        2. The claim as presented by Assistant General Chairman J. R. Cook on August 27, 1983 to Manager-Engineering J. R. Rymer shall be allowed as presented because said claim was not disallowed by Manager-Engineering J. R. Rymer in accordance with Rule 24(h)(1)A.

        3. As a consequence of either or both (1) and/or (2) above, Track Laborer M. A. Wagner shall be allowed pay

        '. . . for each and every day that a junior man worked on this Crossing Gang, beginning with Monday, August 1, 1983 continuing until Mr. Wagner was/or is called back to work in line with his legal displacement which he exercised on July 28, 1983. This claim shall be based on eight (8) hours for each date of claim as well as any incidental overtime that may have been worked by the junior employe that was called back in Mr. Wagner's place.'"

OPINION OF BOARD: The incident giving rise to this Claim occurred on August 1, 1983, when Claimant was allegedly deprived of his displacement rights. The Organization asserts that a Claim was filed in this matter by letter dated August 27, 1983, and no response was received from Carrier. Petitioner again wrote to Carrier on November 23, 1983, and requested payment of the Claim in view of the failure of Carrier to respond to the original Claim. Carrier responded on January 13, 1984, indicating that there was no record of the August 27, 1983, letter having been received by Carrier. Further Carrier then asserted that the Claim was not timely and in violation of Rule 24 of the Agreement and was therefore barred.

        The record of this dispute reveals that there is no evidence whatever submitted by Petitioner in support of its contention that the Claim had been transmitted by letter of August 27, 1983. Rule 24 provides that Claims must be presented within 60 days of the occurrence upon which the Claim is based.

        The issue in this dispute has been before this Board (among many others) on a number of occasions. In Third Division Award 11505 we said:

> "It is a general principle of the law of agency
> that a letter properly addressed, stamped, and
> deposited in the United States mail is presumed to
> have been received by the addressee. But, this is
> a rebuttable presumption. If the addressee denied
> receipt of the letter then the addresser has the
> burden of proving that the letter was in fact
> received. Petitioner herein has adduced no proof,
> in the record, to prove de facto receipt of the
> letter by the Carrier . . . . Upon the record be-
> fore us we find that Petitioner has not proven that
> it presented the Claim, to Carrier, within the time
> limitation agreed to by the parties; and, in the
> absence of such proof the claim is barred. . . ."

The situation in this dispute is identical to that cited supra. The conclusion too must be that the Claim was not handled in accordance with the established procedures of the Agreement and was not timely filed. The Claim is barred.

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
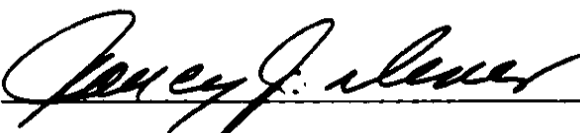
That the Claim is barred.

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 23rd day of November 1987.