

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26732
Docket Number MW-26597

Marty E. Zusman, 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 District Chairman M. S. Corbett on December 5, 1983 to Division Engineer J. Zimmermann shall be allowed as presented because the claim was not disallowed by Division Engineer Zimmermann in accordance with Agreement Rule 64(b) (System File NEC-BMWE-SD-849).

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

OPINION OF BOARD: By Certified letter of December 5, 1983, the District Chairman filed Claim on behalf of seven employees for alleged Carrier violation of the Agreement. The record indicates that by individual letters of January 5, 1984, the Carrier responded to each of the seven employees. Each letter was copied to the District Chairman. Thereafter, the Organization advanced its Claim on the property and to this Board alleging Carrier violation of Rule 64(b). That Rule states in pertinent part:

"Should any such claim or grievance be disallowed, AMTRAK shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative), in writing, of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented,"

The Carrier denies that Rule 64(b) was violated. It provided on property copies of the seven letters and each carries the clear notation "cc: M. Corbett." The record indicates that the Organization was aware of those letters and filed its appeal on the sixtieth day.

The Organization points out that District Chairman Corbett did not receive a response to the Claim he filed on December 5, 1983. It notes again in correspondence on property that no such denial had been received by the District Chairman by June 15, 1984. The Organization argues that the Rule clearly requires a response to the individual who filed the Claim, whether or not the individual employees listed in the Claim received a response. Given that procedural violation it requests the Claim be sustained.

This Board, by long established precedent, must make its decision based on probative evidence established in the record as developed on property. Therein, we find no evidence in any correspondence of record making mention of Exhibits 8, 9 or 10 of the Carrier's Submission. To be considered by this Board such evidence must be firmly grounded on the property.

Moreover, central to a resolution of this procedural issue is an understanding by this Board of the normative procedures for handling claims on the property. Nowhere in the record is evidence presented by either party as to whether regular or Certified mail was utilized. Clearly the original Claim filed by the District Chairman before the procedural issue was raised was sent by Certified mail indicating that such was relied upon by the Organization. Nowhere is there proof by the Carrier that copies were sent to the District Chairman. We are aware of many Awards including recent Third Division Award 26456 which resolve such disputes on the basis of evidence of record which presents such proof or clearly gives evidence that the regular mails were used.

Absent proof of delivery or evidence that the regular mails were used, this Board has generally held that the burden is on the sender to show by probative evidence that the denial has been sent. Whatever evidence the Carrier may have had or could have raised in its defense, it did not do so on the property. Having been challenged on the procedure, the Carrier had a responsibility to produce substantial evidence of record that the regular mail service was the norm in exchanging correspondence on the property and/or that the letter to the District Chairman was in fact mailed. This it did not do on the property and the Claim must therefore be sustained.

The Board holds that the Carrier violated Rule 64(b) when it did not respond in writing to the District Chairman who filed the Claim. This is consistent with numerous Awards of this Board and we are precluded thereby from considering the merits (Third Division Awards 26213, 25309, 22551). The Claim is sustained with liability to the date of Assistant Chief Engineer Ellis' first written declination, i.e., April 25, 1984 (Third Division Awards 26213, 24269).

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.

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Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1987.