

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 28601  
Docket No. MW-28785  
90-3-89-3-179

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

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 Vice Chairman N. DiStefano on January 7, 1988 to Supervisor J. S. Laznik shall be allowed as presented because said claim was not disallowed by Supervisor Laznik in accordance with Rule 64(b) (System File NEC-BMWE-SD-2071).

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

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On January 7, 1988, a Claim was submitted to a Carrier Supervisor. Carrier asserts that it denied the Claim, in its entirety, by letter dated February 19, 1988. The Organization denies that it ever received the letter of denial and advised Carrier, on March 14, 1988, that it was in violation of Rule 64 which requires that a disallowance notification be made, in writing, within sixty (60) days.

On March 17, 1988, Carrier replied, stating that, in fact, it had replied as stated above by certified mail. A copy of the alleged certified initiating stub (PS Form 3800) appears in the record, but the date stamped on same is smeared and illegible. A copy of the asserted original denial was also forwarded to the Organization on March 17, 1988.

During handling on the property, the Organization requested a copy of the Domestic Return Receipt (PS Form 3811). Carrier responded that it was only required to prove timely mailing, but not that it was received.

Carrier asserts, in its Submission, that the Postal Service was unable to supply the Domestic Return Receipt, and obviously Carrier did not have a copy.

The issue here is limited to the timeliness of the declination only.

These types of cases are not novel, and we are convinced that each case must be decided solely upon its own record.

Carrier argues that it need only show a timely denial, but it need not prove receipt. Be that as it may, if the Organization denies receipt, then the burden of showing a mailing is on the Carrier and the burden requires some factual showing other than merely a copy of a letter and an illegible date stamp.

The Organization makes an argument which has certain appeal under this particular record. Carrier received the Claim on January 11, 1988. A February 19 denial by certified mail suggests that the Carrier sought and desired confirmation of its compliance with Rule 64. Yet, when it did not receive a Domestic Return Receipt, it took no follow-up action as the 60 day limit approached.

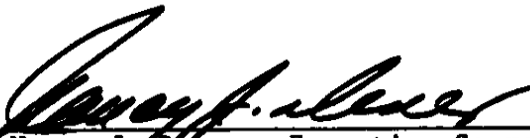
Based upon the record here, we will sustain the Claim. However, under the prevalent authority, we limit the Carrier's liability to March 17, 1988. See Third Division Award 24269 on the property.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1990.