

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32200
Docket No. MW-32980
97-3-96-3-226**

The Third Division consisted of the regular members and in addition Referee John H. Abernathy when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it imposed a five (5) day suspension upon Track Inspector F. H. Jarvis and failed to hold a hearing in connection therewith as requested by him within the Waiver/Hearing Offer Form 2 dated November 16, 1994 (System File D-222/950212).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered and credited with '... all benefits and entitlement as if he had worked for the unjust assessment of discipline.'"**

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

Claimant F. J. Jarvis, with over 17 years of service, on November 15, 1994 was working as a Track Inspector under the supervision of Manager Track Maintenance (MTM) D. J. Kula at Idaho Falls, Idaho. At approximately 9:19 A.M. at Mile Post 3.70 on the Aberdeen Branch at Rockford, MTM Kula observed the Claimant hi-railing on the main track. MTM Kula stopped the Claimant and determined that the Claimant did not have a Track Warrant for the track he was traveling on. Claimant was assessed five days off without pay. On November 16, 1994 MTM Kula issued Claimant a Waiver/Hearing Offer (Form 2) charging Claimant with failure to obtain authority to enter the track on the 15th. Form 2 provides the Claimant with two options: Option A - accept the discipline and waive his right to a Hearing or Option B - reject the discipline and have a formal Investigation. Claimant had 15 calendar days to accept or reject the discipline.

Rule 48(a) of the Agreement provides "Discipline shall be considered accepted if formal rejection is not received within fifteen (15) days of receipt of Carrier's letter (of discipline).

This case raises two fundamental issues involving an interpretation of Rule 48(a): What constitutes "formal rejection" and whether the 15-day requirement was met.

The Organization submits that the requirement of a "formal rejection" is satisfied by a phone call or by conversation with a Carrier officer. The Carrier contends that the formal rejection must be in writing and offers four supporting arguments. First, the form sent to the Claimant contains two options, one of which, "Option B", recites that the employee desiring an Investigation should check that box. There is a place for the employee's signature and the Supervisor's signature showing receipt of the rejection. Checking Option B and returning the form in a timely fashion constitutes formal rejection.

Second, the Carrier pointed out, without dispute by the Organization, that since the Carrier and the Organization revised the discipline Rule, "formal" rejection has always been considered to be the signing of the proposal waiver. Thus, should the Board find any ambiguity in the terms of Rule 48(a), the practice of the parties would be decisive. Third Division Awards: 28272, 20467. This 15-day requirement has been in effect at least since 1981 and the Carrier contends it has been consistently applied.

Third, if "formal rejection" can be indicated by a phone call or a conversation, what would be the definition of an "information rejection?" Logic supports the position of the Carrier.

Finally, the Carrier cites an Award between the parties to this dispute, Third Division Award 31253, in which the Board agreed with the Organization's position that "formal" notification of a job vacancy required something more than "plain" notification.

The Board finds the evidence supports the Carrier's position on the issue of formal rejection.

The second issue centers on the Rule 48(a) requirement that the notice of rejection must be made within 15 calendar days from the date of receipt of the letter of charges. Claimant was given several reminders of this 15-day time limit requirement. In this case the charge letter was given to Claimant on November 16, 1994. Assuming one does not count the first day, i.e., November 17, the 15th day would be December 1, 1994. Claimant contends he slipped his signed rejection under the office door of Chief Clerk S. Flores sometime after 5:00 P.M. on December 1, 1994. The Organization submits that act constitutes timely notice and that to deny the Claimant the right to a Hearing violates due process. Carrier's Agent Flores submitted a written statement that he did not find the formal rejection notice until December 2, 1994. Track Maintenance Manager Kula also furnished a written statement to that effect. The Carrier argues the rejection should have been received prior to the start of shift on December 1, 1994, but Claimant was given until the end of the business day to submit his rejection. Carrier submits there is substantial evidence that the rejection was not received prior to the close of business on the 15th day (December 1, 1994).

The Board finds that Claimant's slipping a rejection under the office door of the Chief Clerk sometime after the close of business on December 1, 1994 constitutes "delivery," but does not constitute "receipt" of that rejection by the Carrier prior to the close of business on December 1, 1994.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 17th day of September 1997.