

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34004
Docket No. SG-34743
00-3-98-3-408**

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (**Brotherhood of Railroad Signalmen**
(**Consolidated Rail Corporation**

STATEMENT OF CLAIM:

“Claims on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

- A. Claim on behalf of M.L. Foster for payment of 12 hours at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, Rule 5-A-1(h) and Appendix ‘P’, when it used a management employee to perform covered work at Avon Yard on January 11, 1997, and deprived the Claimant of the opportunity to perform the work. Carrier also violated Rule 4-K-1 when it failed to provide notice of the denial of the claim within the time limits. Carrier’s File No. SG-962. General Chairman’s File No. RM2976-42-0597. BRS File Case No. 10571-CR.**
- B. Claim on behalf of M.L. Foster for payment of 12 hours at the double time rate, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, Rule 5-A-1(h) and Appendix ‘P’, when it used a management employee to perform covered work at Avon Yard on January 12, 1997, and deprived the Claimant of the opportunity to perform the work. Carrier also violated Rule 4-K-1 when it failed to provide notice of the denial of the claim within the time limits. Carrier’s File No. SG-963. General Chairman’s File No. RM2977-42-0597. BRS File Case No. 10572-CR.”**

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.

There is found in this dispute a threshold procedural issue involving time limits for handling claims and grievances which must be examined and ruled upon before any consideration can be given to the merits of the dispute. This procedural issue is not merely an irrelevant topic which was introduced in order to divert attention from the main point under consideration but rather is a significant matter in the Board's review and determination of the issues contained in the dispute.

On this property, the parties negotiated rules Agreement contains, in pertinent part, the following language:

"RULE 4-K-1 - CLAIMS AND GRIEVANCES

4-K-1. (a) . . . All grievances or claims other than those involving discipline must be presented, in writing, by the employee or on his behalf by a union representative, to the Supervisor-C&S (or other designated supervisor), within sixty (60) calendar days from the date of the occurrence on which the grievance or claim is based. Should any such grievance or claim be denied, the Supervisor shall, within sixty (60) calendar days from the date same is filed, notify whoever filed the grievance or claim (employee or his representative) in writing of such denial. If not so notified, the claim shall be allowed as presented."

In the application of this Rule 4-K-1, the parties, for reasons best known to them, voluntarily entered into a side-bar understanding which reads as follows:

"February 15, 1989

**Mr. R.E. McKenzie, General Chairman
United Signalmen General Committee
Griest Building, Suite 508
8 N. Queen Street
Lancaster, PA 17603**

Re: Rules 4-K-1, 6-A-3 and 7-A-1

Dear Sir:

This refers to our meeting on January 10, 1989, regarding the time limit provisions of Rules 4-K-1, 6-A-3 and 7-A-1.

It was understood that when U.S. Mail is used the postmark on the envelope will govern in determining compliance with the various time limits under Rules 4-K-1, 6-A-3 and 7-A-1.

Very truly yours,

**/s/ G. F. Bent
G. F. Bent
Senior Director-Labor Relations**

I concur:

**/s/ Roland E. McKenzie
General Chairman, BRS**

**2/15/89
Date"**

In this case, the Organization presented the two claims as outlined in the Statement of Claim, supra, to the Carrier via Certified U.S. Mail postmarked January 13, 1997. The return receipt for this piece of Certified U.S. Mail indicates that the date of delivery was January 16, 1997. The Carrier's denial of these two claims was issued

via Conrail Electronic Message System dated "Saturday, 15 March 1997 10:56 AMET." [sic] These are facts of record which are not disputed by the parties.

From the chronology just outlined, it is clear that more than 60 calendar days were involved from the postmark date on which the claims were presented to the Carrier to the date of the Carrier's e-mail denial thereof.

The issue of timeliness of handling was discussed by the parties during the protracted handling of this dispute on the property and continued to this Board as part of the Statement of Claim for consideration by the Board.

It is the position of the Organization that the February 15, 1989 side-bar agreement quoted herein is the controlling factor in determining the time limits when U.S. Mail is used as in this instance.

For its part, the Carrier argued that:

"The postmark protects compliance with protecting the timeliness for filing a claim, issuing a denial, etc.; however, the Assistant Division Engineer's time limits do not begin to run until receipt of the claim." [sic]

The Carrier continued and enhanced this argument in its Submission to the Board by contending as follows:

". . . nowhere in the collective bargaining agreement is the postmark mentioned as the triggering event that begins the counter."

The Board does not agree with the position taken by the Carrier. The February 15, 1989 Letter of Understanding was made by the same parties who were empowered to make and amend the collective bargaining Agreement on the property. The term "from the date same is filed" as found in Rule 4-K-1(a) was modified on this property for this group of employees by the February 15, 1989 Letter of Understanding to provide that ". . . when U.S. Mail is used the postmark on the envelope will govern in determining compliance with the various time limits. . . ." In this case, given these facts, the claims in question were "filed" on January 13, 1997, the postmark date of the Certified U.S. Mail that delivered the claims to the Carrier. No other conclusion is possible.

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Therefore, in accordance with the last sentence of Rule 4-K-1(a), "the claim shall be allowed as presented." Because of this determination, the Board is unable to consider the merits, or lack thereof, which exist in this case.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of April, 2000.