

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44722
Docket No. MW-45158
22-3-NRAB-00003-210498**

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

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(The Kansas City Southern Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The claim* as presented by Vice Chairman K. Malzner, by letter dated March 16, 2017, to Director Labor Relations T. Hardge Stephenson, shall be allowed as presented because said claim was not disallowed by the Carrier in accordance with Rule 14 (System File KCS263KM17/K0417-7121 KCS).**
- (2) The claim* as presented by Vice Chairman K. Malzner, by letter dated March 16, 2017, to Director Labor Relations T. Hardge Stephenson, shall be allowed as presented because said claim was not disallowed by the Carrier in accordance with Rule 14 (System File KCS264KM17/K0417-7122).**
- (3) The claim* as presented by Vice Chairman K. Malzner, by letter dated March 16, 2017, to Director Labor Relations T. Hardge Stephenson, shall be allowed as presented because said claim was not disallowed by the Carrier in accordance with Rule 14 (System File KCS265KM17/K0417-7123).”**
- (4) The claim* as presented by Vice Chairman K. Malzner, by letter dated March 16, 2017, to Director Labor Relations T. Hardge Stephenson, shall be allowed as presented because said claim was not disallowed by the Carrier in accordance with Rule 14 (System File KCS266KM17/K0417-7124).**

- (5) The claim* as presented by Vice Chairman K. Malzner, by letter dated March 16, 2017, to Director Labor Relations T. Hardge Stephenson, shall be allowed as presented because said claim was not disallowed by the Carrier in accordance with Rule 14 (System File KCS267KM17/K0417-7125).

*The initial letters 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 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.

The issue in this case is whether the Carrier timely denied the Organization’s claims within the meaning of Rule, which provides:

**“RULE 14
Time Limit on Claims and Grievances**

14-1. All claims or grievances shall be handled as follows:

- (a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within 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, but this

shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

- (b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employees as to other similar claims or grievances. It is understood however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the 60-day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose.
- (c) The requirements outlined in paragraphs (a) and (b) of this rule, pertaining to appeal by the employee and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. ...”

The Organization presented five separate claims by letters dated March 16, 2017 which were received by the Carrier on March 20, 2017. The Carrier denied those claims by letter dated May 18, 2017 which were mailed on that date (by certified mail) and were actually received by the Organization on May 22, 2017. See Carrier Exhibit A at 91-92.

If the May 18, 2017 mailing date is used, then the Carrier’s denial was within the 60-day requirement in Rule 14 (59 days). However, if the May 22, 2017 receipt date by the Organization of the Carrier’s denial is used, then the Carrier’s denial was beyond the 60-day requirement in Rule 14 (63 days).

This case calls into question whether the “mailbox rule” should be applied or whether actual date of receipt by the Organization of the Carrier’s denial should govern.

For determining whether a party acted in a timely fashion with the filing of a claim or an appeal as required by timeframes found in its contracts, the “mailbox rule” looks at “... when it is deposited in the U.S. mail (or nowadays, some other form of reliable delivery service.” Third Division Award 41162. See also, Third Division Award 36696 (“As we have said repeatedly, the determining date for a procedural time limit violation is when a claim is received by the Carrier and its denial letter is postmarked” [emphasis omitted]); Third Division Award 33570 (“Prior Awards cited by the Organization establish that the postmark date determines when the Carrier’s decision has been rendered”); Fourth Division Award 4899 (“In our view, the later Awards are consistent, and hold that placing a denial or a response in the U.S. Mail on the 60th day satisfies the notification requirement”); Public Law Board 7187, Award 4 (“Numerous Board Awards have stated that the ‘postmark’ is the governing factor in establishing the timelines of a mailing”).

On the other hand, there are awards that require actual receipt for satisfying procedural filing requirements.

We find the better view is to follow the awards utilizing the “mailbox rule” requiring a finding that the Carrier’s denial was timely under Rule 14. Well-reasoned precedent quoted above aside, that finding is particularly appropriate given that the USPS continues to lengthen the number of days it considers to be timely delivery for first-class mail.

For example, in 2017 the USPS considered first-class mail timely delivered in one to three days (“First-Class Mail ... offers delivery between one and three days within the U.S.”):

<https://www.stamps.com/whitepapers/2017-usps-postage-rate-increase-guide.pdf>

For 2022, “delivered in 5 business days” (as opposed to three days) is now considered timely by the USPS for first-class mail [2022 version]:

<https://www.usps.com/ship/mail-shipping-services.htm>

Relying upon the USPS to timely deliver a first-class letter containing an otherwise timely denial of an appeal is just no longer reliable. Moreover, this issue may well become moot as communications between parties become mostly electronic.

We find that awards issued between the parties with this neutral member sitting with the Board are distinguishable. See Third Division Awards 43324; 43325; 43326; 43327; 43328. In those cases, the issue was not whether the mailbox rule was followed. In those cases, the Carrier did not answer the Organization's appeal requiring a sustaining of the claims as presented as required by Rule 14.

Similarly, where a carrier responds to an appeal, but fails to do so within the contractually designated time period (as opposed to facts in this case with the Carrier denying an appeal within the designated time period but where the denial is not delivered within that time period), the results in those case are also distinguishable. See e.g., Public Law Board 7694, Awards 63 and 64 where the carrier in those cases responded to appeals, but the responses were not mailed within the required time period resulting in sustaining awards through operation of clear contract language governing time periods.

Based on the above, because the Carrier mailed its denial of the Organization's appeals within the 60-day period in Rule 14 we find the Carrier met its obligations under that rule. Because only the procedural question is before this Board and we find that argument lacks merit, the claim shall be denied.

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 6th day of May 2022.