

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44723
Docket No. MW-45173
22-3-NRAB-00003-210499**

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 April 28, 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 KCS283KM17/K0417-7200 KCS).**
- (2) The claim* as presented by Vice Chairman K. Malzner, by letter dated April 28, 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 KCS284KM17/K0417-7201).**

***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 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.

Claims were filed by the Organization dated April 28, 2017 which were received by the Carrier on May 1, 2017. By letter dated and mailed June 29, 2017, the Carrier denied the claims. According to the Organization, the denials were received by the Organization on July 3, 2017. The Organization argues that the Carrier's denials were not within the 60-day requirement in Rule 14.

For reasons discussed in Third Division Award 44722, the "mailbox rule" governs which means that for purposes of Rule 14, the June 29, 2017 mailing by the Carrier is the critical date for determining compliance with the time provisions in that rule. The Carrier's June 29, 2017 denials were 59 days from the Carrier's receipt of the claims making the denials in compliance with Rule 14.

And as we discussed in Third Division Award 44722:

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.

The only issue before this Board is the procedural time limit question, requiring that the claims 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.