

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 44742
Docket No. MW-46374
22-3-NRAB-00003-210084

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

(Brotherhood of Maintenance of Way Employes 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 appealed by General Chairman D. Albers, by letter dated November 27, 2019, to Director Labor Relations L. Fernandez, shall be allowed as presented because said claim was not disallowed by the Carrier in accordance with Rule 14 (System File KCS488RR19/2019-7994 KCS).
- (2) The claim* as appealed by General Chairman D. Albers, by letter dated November 27, 2019, to Director Labor Relations L. Fernandez, shall be allowed as presented because said claim was not disallowed by the Carrier in accordance with Rule 14 (System File KCS489RR19/2019-7995).
- (3) The claim* as appealed by General Chairman D. Albers, by letter dated November 27, 2019, to Director Labor Relations L. Fernandez, shall be allowed as presented because said claim was not disallowed by the Carrier in accordance with Rule 14 (System File KCS490RR19/2019-7996).
- (4) The claim* as appealed by General Chairman D. Albers, by letter dated November 27, 2019, to Director Labor Relations L. Fernandez, shall be allowed as presented because said claim was not disallowed by the Carrier in accordance with Rule 14 (System File KCS491RR19/2019-7997).

- (5) The claim* as appealed by General Chairman D. Albers, by letter dated November 27, 2019, to Director Labor Relations L. Fernandez, shall be allowed as presented because said claim was not disallowed by the Carrier in accordance with Rule 14 (System File KCS492RR19/2019-7998).
- (6) The claim* as appealed by General Chairman D. Albers, by letter dated November 27, 2019, to Director Labor Relations L. Fernandez, shall be allowed as presented because said claim was not disallowed by the Carrier in accordance with Rule 14 (System File KCS493RR19/2019-7999).

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.

This dispute involves the same time frames discussed in Third Division Award 44741, but different claims.

According to the Organization, claims were filed by the Organization and denied by the Carrier which the Organization appealed by letters dated November 27, 2019 which were received by the Carrier on December 2, 2019. The Carrier denied the Organization's appeals on January 31, 2020 mailing such on the same date which the Organization did not receive until February 3, 2020. The Organization argues that the Carrier's denial was 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 January 31, 2020 mailing by the Carrier is the critical date for determining compliance with the time provisions in that rule.

With respect to the Carrier’s mailing of its denial, while the Organization argues that the date the Carrier mailed its denial is immaterial, the Organization does not dispute that the Carrier mailed its denial on January 31, 2020. See Organization Submission at 14-15:

“The Carrier states in its letters dated June 29, 2020 (Employees’ Exhibits “A-7”, “B-7”, “C-7”, “D-7”, “E-7” and “F-7”), the following:

“The appeals with the above captioned file numbers were received in the Carrier’s office on December 2, 2019. The Carrier denied the appeal on the 60th day from the date of receipt and mailed to the Organization on Friday January 31, 2020, via UPS Tracking number 1Z 528 7X1 [NT] 9678 0243. The letters were delivered to the Organizations’ Hendersonville office on Monday February 3, 2020 at 9:59 am.” (Footnote omitted)

The Organization does not take issue with the Carrier’s statement.” ...

The Carrier’s January 31, 2020 denial was 60 days from the Carrier’s receipt of the claims making the denial 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.