

Award No. 38  
Case No. 84

Public Law Board No. 2778

PARTIES  
TO  
DISPUTE:

Brotherhood of Maintenance of Way Employees  
and  
The Baltimore and Ohio Railroad Company

STATEMENT  
OF  
CLAIM:

Carrier has violated the Schedule Agreement, particularly the amendment dated August 4, 1976 when it failed to place the name of Thomas Maier on the Toledo East seniority track roster. He should be granted a seniority date of September 3, 1976 with eight hours pay for each from August 3, 1978 for which he was deprived of employment and the difference in pay for which deprived of employment due to Carrier's violation of the August 4, 1976 Agreement."

FINDINGS:

Claimant filed a claim by letter of August 3, 1978 alleging Carrier breached Rule 52(d) when he was not permitted to exercise seniority rights on his home division, Toledo East. The claim was denied by Manager Engineering King's letter dated October 2, 1978; that letter pointed out that 52(d) prescribes that employes may exercise seniority on

their home rosters upon 15 days notice

"to the Foreman of the Regional  
Gang and the Division Engineer  
on their home division."

Manager King's letter of October 2 went on to

state that:

"I have no record of your notice of  
intent to assert your rights as  
outlined in Rule 52(d) above. Your  
claim is therefore not supported by  
the Agreement and is declined in its  
entirety."

Petitioner contends that the claim must be allowed  
as presented inasmuch as Carrier failed to comply with Rule 50's  
requirement that whoever filed the claim must be notified in writing  
of its disallowance within 60 days from the date the claim is filed.  
The envelope containing Mr. King's letter of October 2, 1978 was  
not postmarked until October 10, 1978.

According to Carrier, reasonable care was taken by  
Carrier to make certain that the October 2, 1978 letter would be  
duly handled by the Postal Service and timely delivered. We find  
no basis in this record for finding that Carrier acted in bad faith  
or that the letter was not mailed by Carrier until after October 2.  
Both parties have a right to rely on the regularity of the mail.  
While the claim was filed by certified mail, there is no evidence  
that the parties customarily used or had agreed to use certified  
mail for their communications. It does not appear that Carrier had  
anything to gain by delaying the mailing of its letter of declina-  
tion.

In the light of the attending circumstances, Petitioner's time limit objection will be overruled.

As to the merits of the case, the record fails to establish that claimant failed to give 15 days notice to the Manager-Engineering of his intent to exercise seniority on his home roster as prescribed by Rule 52(d). He voluntarily left his position with the rail gang at that time in July 1978 and contacted Supervisor Thayer on his home district. He was advised by Thayer that there were no openings available there.

Claimant nevertheless did not return to the rail gang and lost his rail gang seniority. His seniority on the Toledo-East roster was subsequently, on December 4, 1979, restored by Carrier.

It also appears that claimant had no seniority on the Toledo-East District in 1978, at the time he left his rail gang and spoke to Supervisor Thayer about the possibility of an opening in that District. His name did not appear on the 1977 Toledo-East Seniority Roster when it was posted. The 60-day period prescribed by Rule 10 for protesting the Roster expired on April 7, 1977, but protest was made by claimant until over three months subsequent to that date. His protest was manifestly untimely.

In view of all these factors, the lack of available positions of the home district, inadequate notice under Rule 52(d) and claimant's failure to file timely protest as to the absence of his name from the 1977 Seniority Roster, the claim must be denied.

AWARD: Claim denied.

Adopted at Baltimore, Md. July 13, 1984.

  
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Harold M. Weston, Chairman

  
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Carrier Member

  
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Employee Member