

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 30

Carrier File No. 4MWB 89-01-17B

Organization File No. T-M-634

STATEMENT OF CLAIM

The claim as presented by Vice General Chairman A. R. Hohbein on September 20, 1988 to Minnesota Division Superintendent D. G. Anderson shall be allowed as presented because said claim was not disallowed by Superintendent Anderson in accordance with Rule 42A (System File T-M-634/4MWB 89-01-17B).

F I N D I N G S

The Organization seeks to have this claim sustained on procedural grounds. The Organization initiated a claim by certified mail on September 20, 1988. This, according to the record, was timely received by the Carrier. On November 29, 1988 the General Chairman wrote to the Carrier stating that the claim should be paid as presented, contending that he had not received a reply to the claim within 60 days, as required by Rule 42A.

The Carrier in turn advised the General Chairman that a denial answer had been sent to the Organization by timely letter dated November 18, 1988. The Carrier supported its position by supplying

a file copy of such letter, stating that the letter was "typed, signed and mailed on November 18, 1988". The reply was sent by ordinary U.S. mail.

This, of course, is by no means the first instance in which such circumstances have been reviewed. The Board must be guided by the time limits in Rule 42A, as well as the many interpretations thereof. The Carrier cites Second Division Award No. 10940, which denied a similar claim. The Organization, however, refers to a number of Awards, many of which cite other Awards as precedent. Some of these are of no relevance here, since there was no question but that the Carrier had either failed to respond or admittedly had responded tardily. Other Awards, however, are directly on point. These include Third Division Award Nos. 17227, 17291, and 25100. Award No. 25100 states as follows:

Irrespective of the merits of the instance case the record shows conflicting evidence with respect to the procedural issue raised. The Organization claims that it never received the Carrier's first delineation letter dated May 25, 1982 and the Carrier claimed that the letter was sent. The latter produced a copy of the letter from its files which it sent to the Organization on July 9, 1982.

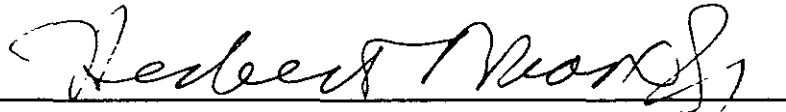
When dealing with issues such as this the Board must rely on both precedent and substantial evidence of record. There is considerable precedent emanating from this Board, by means of prior Awards, wherein the Board has held that it is the responsibility of Carriers to be certain that letters of declination are properly delivered to the appropriate Organization officer under Agreement time rules (Third Division 10173; 11505; 14354; 16163). With respect to substantial evidence, which has been defined as such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Consol. Ed. Co. vs Labor Board 305 U.S. 197, 229), this Board has ruled in the past that statements alone on the part of Carriers to the effect that letters have been mailed do not sufficiently meet the evidence test even when copies are "stamped as timely received by Carrier's

supervisory personnel" (Third Division 17291; also Third Division 10173; 10742).

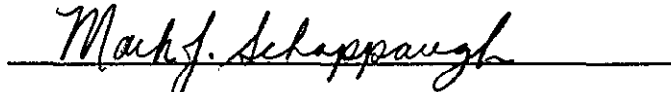
The Board finds no basis to disregard this reasoning.

A W A R D

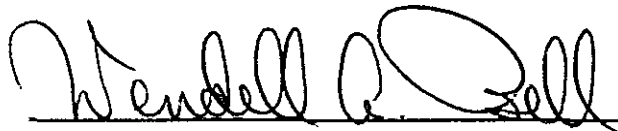
Claim sustained. The Carrier is directed to place this Award in effect within 30 days of the date of this Award.



HERBERT L. MARX, Jr, Chairman and Neutral Member



MARK J. SCHAPPAUGH, Employee Member



WENDELL A. BELL, Carrier Member

NEW YORK, NY

DATED: 11-21-91