PUBLIC LAW BOARD NO. 7163

AWARD NO. 10

CASE NO. 10

Carrier Files: 12(04-0056)

BMWED Files: I59129003

PARTIES TO
THE DISPUTE: Brotherhood of Maintenance of Way Employes
Division - IBT Rail Conference
vs.
CSX Transportation, Inc.

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained.

STATEMENT OF CLAIM:

"1. The Agreement was violated when the Carrier failed and refused to allow Mr. R. L. Johns to work on September 16, 17, 18, 19, 22, 23, 24, 25, 26 and 27, 2003 [System File I59129003/12(04-0056) CSX].

2. The claim* as presented by Cive Chairman L. C. Smith on November 6, 2003 to Chief Regional Engineer K. L. Johnson, Jr. Shall be allowed as presented because said claim was not disallowed in accordance with Rule 24(a).

3. As a consequence of the violation referred to in Parts (1) and/or (2) above, Claimant R. L. Johns shall now be compensated for seventy-two (72) hours at his respective straight time rate of pay and fifty-seven and one-half (57.5) hours at his respective time and one-half rate of pay.

*The initial letter of claim will be reproduced within our initial submission."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The instant dispute includes a procedural timeliness challenge that arises from an unusual record. Claimant was removed from service in July of 2003 and later terminated. By letter dated August 15, 2003, he was to be returned to service on Monday, September 15, 2003 via a leniency reinstatement "... pending his ability to pass a return-to-work physical examination." Claimant did report for work on September 15, 2003 and worked that day. But it was soon learned that he had not undergone the physical examination. He was removed from service a second time through September 27, 2003, which is apparently the amount of time it took to process his physical and evaluate the results.

The instant claim was filed on November 6, 2003 to recover lost work time. It was addressed

to the Chief Regional Engineer. It is undisputed that it was timely filed and received by the Carrier official designated to receive it per Rule 24(a) of the parties' Agreement. The Organization and the Carrier each contend the other was responsible for the second removal from service.

The on-property record contains an unsigned file copy of a December 18, 2003 letter of denial signed by the Division Engineer on behalf of the Chief Regional Engineer. Coincidentally, both engineers had the same last name.

The Organization advanced the claim to the appropriate higher Carrier level by letter dated January 16, 2004. The Organization's letter quoted the final two sentences of Rule 24(a) as follows:

> The Designated Officer, or other designated officer shall render a decision within sixty (60) days from the date same is filed, in writing, to whoever filed the claim or grievance (the employee or his union representative). When not so notified, the claim will be allowed.

According to the Carrier's submission, it apparently understood the Organization's letter to be an objection to the validity of a denial letter being signed by someone other than the Chief Regional Engineer. The Carrier did not believe such to be a valid basis for the Organization's objection. Consequently, the Carrier maintained that its denial of the claim had been timely issued over the name of the Chief Regional Engineer and satisfied Rule 24(a). The Carrier denied the claim by letter dated June 18, 2004 to which it attached a copy of the unsigned file copy of the disputed initial denial letter of December 18, 2003.

The Organization appealed the denial by letter dated February 2, 2005. In this letter, the Organization clearly asserted that it had not received the Carrier's alleged initial denial letter of December 18, 2003 at any time before it came attached to the Carrier's June 18, 2004 denial.

When the Carrier did not further respond in any manner whatsoever, the Organization filed its notice of intent dated March 17, 2005 to progress the claim to the Third Division of the NRAB. The record was closed as of that date.

Thus the narrow procedural question before us is whether the Carrier has proven that it complied with the response time limit of Rule 24(a).

The Organization provided this Board with a number of prior awards, many between these same parties, that considered the evidentiary sufficiency of unsigned file copies to prove compliance with Carrier response time limits. While the precise rule language involved in those cases is not identical with that of Rule 24(a), it is identical in terms of what compliance requires. All of the awards rejected unsigned file copies as being sufficient to prove that a denial letter was timely mailed. This was undoubtedly due to the wide-spread awareness that such unsigned letters could be fabricated at any time using modern word processing technologies. All of the awards explained that something more is required to prove compliance. See Third Division Awards 33417, 33452, 33623, 34195, 34196, and 34197 as well as additional awards cited therein.

The foregoing awards involved the assistance of four different veteran referees. They were all issued in 1999 or 2000. As a result, the Carrier has been on notice for several years prior to the emergence of the instant dispute that an unsigned file copy of a denial letter is insufficient, by itself,

to prove that a required response was issued in compliance with applicable time limits.

The Carrier did not provide any prior awards where an unsigned file copy of a letter was accepted by an adjustment board to be sufficient proof of compliance.

Given the state of the record in this mater, we must sustain the claim in accordance with the default language of Rule 24(a).

AWARD:

The claim is sustained. The Carrier is directed to comply with this Award on or before thirty (30) days following the date of signing shown below.

Gerald E. Wallin, Chairman
and Neutral Member

R. C. Robinson,
Organization Member

J. T. Klimtzak,
Carrier Member

Date: Dec. 12, 2008