

Award No. 19  
Case No. 78

Public Law Board No. 2630

PARTIES  
TO  
DISPUTE:

Brotherhood of Maintenance of Way Employees  
  
and  
  
The Chesapeake and Ohio Railway Company

STATEMENT  
OF  
CLAIM:

1. Carrier violated the applicable Agreement when it failed to advise claimant L. M. Shambaugh, within the required time that his claim was disallowed.
2. Claimant be compensated for four hours at the punitive time rate of pay for March 4, 1978 and 16 hours at the punitive time and 7½ hours at double time pay of the position of a Class "A" Operator.

FINDINGS:

The August 21, 1954 National Agreement provides that claims must be allowed as presented unless disallowed in writing within 60 days from the date filed.

Claimant submitted his claim by letter of March 6, 1978 for work at a derailment site on March 4, 1978.

Manager of Engineering Robinson intended to deny the claim by a letter dated May 2, 1978. However, that letter

was addressed not to claimant, but to his cousin who had the same initials and last name as claimant, but a different first name, Luther. Claimant's first name is Lindy. The address on the May 2 letter was claimant's address.

Mr. Robinson received a letter from Luther on June 8, 1978 advising that he had not submitted a claim on March 6, 1978. On June 19, 1978, Mr. Robinson informed Vice Chairman Twigg that the case would be considered closed. The General Chairman thereupon, on June 21, asked that the claim be allowed since claimant had not received a timely response.

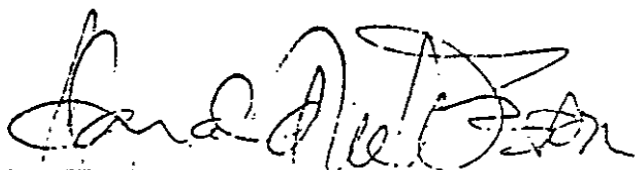
Of course, Carrier intended to deny the claim and would have done so in timely fashion, but for an error in names that may be somewhat understandable. Nevertheless, it cannot be held by any reasonable interpretation that claimant was given notification within the prescribed time that his claim was disallowed.

It is certainly not claimant who should bear the loss occasioned by Carrier's own error, innocent though it may be. The claim will be sustained.

The fact that the address on the Manager's letter of declination was claimant's address does not call for a contrary result. When claimant received at his address a letter addressed to his cousin, Luther, his proper course was to forward it on to the addressee and not to open and read it.

AWARD: Claim sustained. To be effective within 30 days.

Adopted at Baltimore, Maryland, *August 15,* 1981.



Harold M. Weston, Chairman



Carrier Member



Employee Member