

**PUBLIC LAW BOARD NO. 5418**

**Case No. 49**

**Award No.49**

**PARTIES**

**to**

**DISPUTE:**

Brotherhood of Maintenance of Way Employees

-and-

Springfield Terminal Railway Company

**STATEMENT OF CLAIM:**

“(a) Carrier violated the rights of Claimant Chris Tirone under the provisions of Article 1, 10 & 25 of the current agreement when it failed to properly assign Claimant to an overtime assignment and then failed to properly respond to the Claimant’s grievance and claim.

(b) Claimant Tirone should be compensated for 13 hours at the Machine Operator’s overtime rate for this violation.”

**FINDINGS:** At the outset, both parties assert that the other violated the time limit provisions of Article 25. The Organization contends the Carrier did not respond to the initial claim. Conversely, the Carrier contends that the claimant was not timely in its submission of the initial claim, in that they assert the initial claim was filed beyond the allotted time specified from the date of occurrence upon which the claim is based.

The pertinent portion of Article 25 – Claims and Grievances, reads as follows:

“25.1 All claims for compensation alleged to be due must be made in writing no later than forty-five (45) days from the date of the occurrence on which the claim is based. The claimant, or his duly accredited representative, must submit the claim containing the information specified below to the Manager of Engineering Personnel. If not presented in the manner outlined in this paragraph, A claim will not be subject to payment or denial.”

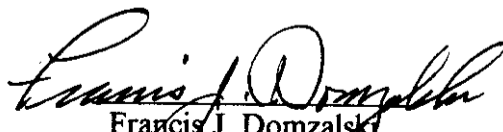
Records show the initial claim filed by the claimant was sent via priority mail, dated April 18, 2000, and received by the Carrier on April 19, 2000. The claim is based on an alleged violation occurring on March 4, 2000.

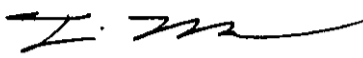
The Carrier's Manager Engineering Personnel, to whom the initial claim was presented, failed to issue a response to subject claim. Thus, the Organization requests that the Board allow the claim, as the Carrier did not respond within 60 days as required by Article 25.3.

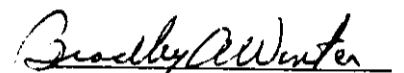
The Carrier asserts, the claimant's time claim dated April 18, 2000 and received by them on April 19, 2000, was not filed within 45 days from the date of occurrence and, therefore, there was no valid claim for the Manager to deny. The Carrier supports its position by referring to First Division Award No. 24547 and Award No. 12 of PLB No. 1449.

Our examination of the above-cited rule and the record herein before us indicates the Carrier is correct in its analysis. We conclude that the claimant's claim was void ab initio, in that no valid claim existed on April 19, 2000. Therefore, we find the claim was not timely submitted and it is dismissed without consideration of the merits of the dispute.

**AWARD:** The claim is dismissed.

  
Francis J. Domzalski  
Neutral Member

  
T. W. McNulty  
Carrier Member

  
B. A. Winter  
Organization Member

Dated: 8-26-2002