PUBLIC LAW BOARD NO. 6301

AWARD NO. 9 CASE NO. 9

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employes and Kansas City Southern Railway Company

ARBITRATOR:

Gerald E. Wallin

DECISION:

Claim denied

STATEMENT OF CLAIM:

"A claim in accordance with Rule 34, of the Agreement between the Kansas City Southern Railway Company - MidSouth/SouthRail (KCS-MS/SR) and its employees represented by the Brotherhood of Maintenance of Way Employees on behalf of Kansas City Southern Railway - Mid South employee Murphy Evans Jr., Social Security No. 428-02-3548, because the Carrier violated the current Work Agreement including but not limited to Rules(s) 1. Scope, Rule 10. Overtime and Letter dated February 10, 1986 of the current Work Agreement between Kansas City Southern Railway Company and its employees represented by the Brotherhood of Maintenance of Way Employees, when the Carrier used outside contractors to load rail panels in Bossier City, Louisiana on Saturday, February 13, 1999.

As a consequence of these violations of Rule 1. Scope, Rule 10. Overtime and Letter dated February 10, 1986, Claimant Evans should be allowed ten (10) hours at time and one-half (1½) of his rate of pay for Saturday, February 13, 1999."

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.

Competing procedural contentions in this dispute must be addressed as a threshold matter. The Organization contends that the Carrier official failed to timely respond to its June 22, 1999 appeal. On the other hand, the Carrier official maintains that he never received a timely appeal by the Organization to trigger his obligation to respond.

There is ample prior arbitral authority that has spoken to this type of dispute in this industry. As a general matter, the burden of proof to establish that an appeal was timely sent is upon the sender. Further, furnishing a copy of a letter after the fact is not sufficient to satisfy this burden.

On this record, we do not find sufficient proof to establish that the Carrier's initial denial of the Claim was timely appealed in accordance with the Agreement. As a result, the Claim must be denied.

AWARD:

The Claim is denied.

Gerald E. Wallin, Chairman

D. D. Bartholomay, Organization Member

DATE: //-5-02

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K. A. Alexander,