

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 133
Case No. 133

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and

CSX Transportation, Inc. (Former Seaboard System
Railroad)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The claim* as presented by Vice Chairman L. C. Smith on December 15, 1998 to Division Engineer A. W. Ferguson shall be allowed as presented because said claim was not disallowed in accordance with Rule 40, Section 1(a) [System File 24(29)(98)/12(99-0283) SSY].

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

FINDINGS:

This Board, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended,; and

2. That the Board has jurisdiction over this dispute.

OPINION OF THE BOARD:

Rule 40 provides in pertinent part:

TIME LIMIT ON CLAIMS AND GRIEVANCES

Section 1

(a) All claims or grievances must be presented in

writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

The Vice Chairman of the Organization, L. C. Smith, sent the following Claim, dated December 15, 1998, from Homerville, Georgia, to the Division Engineer, A. W. Ferguson, in Jacksonville, Florida:

Claim is hereby presented on behalf of two most senior employees who hold seniority in the Track Subdepartment, Group A, on the Atlanta-Waycross Seniority District, who may be out of work or working in a lower rank account force reduction, who are assigned to work under the jurisdiction of Roadmasters Hayes and Moss at Waycross, Georgia, pursuant to Rules 3, 4, 5, 6 and 8 of the Agreement in effect between the Seaboard System Railroad and its Maintenance of Way Employees, dated July 1, 1985, because Carrier violated said Agreement when beginning on October 16, 1998, up to and including November 30, 1998, and continuing, it allowed or otherwise permitted (2) employees a [sic] contractor, Qwest Fiber Optics, to perform the maintenance work of Foreman-Inspectors in connection with a cable laying operation between mileposts A 506 and A 640 on the Atlanta-Waycross Seniority District, Nahunta Subdivision of the Jacksonville Service Lane.

The Division Engineer sent a denial letter, dated February 12, 1999, to the General Chairman, J. R. Cook, in Manistee, Michigan. The Division Engineer referred to the Claim as being dated December 15, 1998 and received in the Division Engineer's office on December 22, 1998.

The Vice Chairman, L. C. Smith, appealed the denial by the Division Engineer in a letter, dated April 10, 1999, to the Director of Employee Relations, J. H. Wilson. The Vice Chairman indicated that the Division Engineer's denial letter contained the date of February 12, 1999; reflected a postmark of February 16, 1999; and actually arrived at the Vice Chairman's office on February 23, 1999. The Vice Chairman described that the Organization had filed the two claims on December 14 and December

15, 1998 whereas the Division Engineer's denial letters contained the date of February 12, 1999 and the postmark of February 16, 1999. The Vice Chairman asserted that the Carrier had failed to comply with the 60-day requirement set forth in Rule 40, Section 1(a) and that the Claims should be allowed as presented.

The Director of Employee Relations responded to the Vice Chairman in a letter, dated June 1, 1999. The response acknowledged that the Claims contained the dates of December 14 and December 15, 1998. The response explained that the Division Engineer had not received the claims until December 22, 1998 because the Division Engineer's office in Jacksonville, Florida had relocated from Druid Street, J501 to 4901 Belfort Road, J350. The response added that:

The date a claim is filed is the date received by the person designated to receive it, not the date of the letter nor the date mailed. On the other hand, the date of response is the date mailed. The claims were received by the Division Engineer on December 22 and declined 57 days later when they were mailed on February 16, which was in compliance with Rule 40.

General Chairman J. R. Cook sent a letter, dated January 31, 2000, to the Director of Employee Relations to confirm that the parties conferred about the dispute on August 11, 1999. The General Chairman stressed that the Division Engineer's representative had received the claims on December 17, 1998 and not on December 22, 1998; that the person who had signed the receipt for the claims had served as an agent for the Division Engineer; that the Division Engineer therefore had received the claims on December 17, 1998; and that the Division Engineer's first actual review of the letter on December 22, 1998 due to the moving of the Division Engineer's office lacks relevance to the timeliness issue.

A careful review of the record indicates that the Organization sent the claim to an address that the Organization repeatedly had used in the past to file claims. The record omits any persuasive evidence that the Division Engineer or any other appropriate representative of the Carrier had notified the General Chairman or the Organization that the Division Engineer would be moving and therefore would have a new address for receiving claims. Thus the Organization had a right to rely on the established address as the appropriate address for the filing of claims.

Unrebutted documentary evidence exists in the record to establish that an employee of the Carrier had signed for the envelope that contained the Claim and had forwarded the envelope to the Division Engineer. The Division Engineer therefore was on notice


that the Claim had been received at his former office location on December 17, 1998. The Division Engineer could have made sure to obtain an extension for submitting the declination or could have made sure to submit the declination within the 60 days as measured by the receipt of the Claim from the Organization at the traditional address for the submission of such claims. The Division Engineer failed to initiate either of these actions. By failing to do so, the Division Engineer assumed the risk that a violation of Rule 40, Section 1(a) would occur.

Rule 40, Section 1(a) allocates the responsibility on the Organization to file a claim to the appropriate officer of the Carrier within 60 days from the date of the occurrence on which the claim or grievance is based. The Organization filed the Claim on December 17, 1998 in an appropriate manner and in a timely manner. The Division Engineer failed to decline the Claim within 60 days of the filing of the Claim. As a result, Rule 40, Section 1(a) requires that the claim be allowed as presented.

The record omits any evidence that the parties had agreed to extend the 60-day period for appealing the claim. Thus the determination that the Carrier's declination was not timely must remain in effect. Consistent with the provisions of Rule 40, Section 1(a), the rights of the parties are reserved to the extent that the present finding may not be considered as a precedent or a waiver of the contentions of the employees as to other similar claims or grievances. Any other arguments raised by the parties lack relevance and persuasiveness under the special circumstances set forth in the record.


AWARD:

The Claim is sustained in accordance with the Opinion of the Board. The Carrier shall make the Award effective on or before 60 days following the date of this Award.


Robert L. Douglas
Chairman and Neutral Member


DA B. Bartholomay
Employee Member

Dated: 3/8/02


Mark D. Selbert
Carrier Member

