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**NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

Award No. 24932

Docket No. 44572

98-1-96-1-U-1913

The First Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Locomotive Engineers  
(Union Pacific Railroad Company (former Chicago &  
( North Western Ry)

**STATEMENT OF CLAIM:**

"The Brotherhood of Locomotive Engineers Union Pacific, former CNW, General Committee requests the Division consider and authorize the claim of Engineer G. C. Brand for all time lost, including the time held out of service prior to the investigation and the time spent at the investigation.

Engineer Brand was dismissed from service by Discipline Notice #2722 dated September 28, 1995 by Mr. M. Payne, Superintendent, Proviso Service Unit following investigation on the following charge:

'Your responsibility for your failure to properly perform your duties when you failed to stop before passing "stop" indication at the 75th Street interlocking on the CSXT Blue Island Subdivision at approximately 1508 hours on September 16, 1995 and subsequent car, track and engine damage, while you were employed as crew member of YPR89, on duty 0630, September 16, 1995, at Proviso.'

Claim premised on BLE - CNW Schedule Rule 41 and 54."

**FINDINGS:**

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On September 18, 1995, the Carrier charged Claimant, an Engineer, with passing through a stop signal at the 75th Street Interlocking on the CSXT Blue Island Subdivision on September 16, 1995. As a result of Claimant running the stop signal, the Carrier also charged him with being responsible for a derailment.

Following the Investigation held on September 21, 1995, the Carrier dismissed Claimant from service. On or about January 8, 1996, the Carrier reinstated Claimant to service without prejudice to his right to progress this appeal to this Board.

This Board need not reach the merits of the case because we rule that the Carrier breached Rule 54(b)(1) which provides:

"All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the company authorized to receive same, within sixty 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 sixty days from the date same is filed, notify the employee or his representative of the reasons for such disallowance. If not so notified, the claim or grievance shall be considered valid and settled accordingly, 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 record reflects that the Local Chairman appealed Claimant's dismissal to the Superintendent of the Proviso Service Unit on October 24, 1995. On the appeal letter, the Local Chairman indicated his address in Addison, Illinois. The Superintendent received the appeal letter on October 25, 1995.

The Local Chairman never received a response to his appeal.

The Carrier submits that the Superintendent dispatched a letter denying the appeal via an overnight courier on December 12, 1995. However, the Carrier's correspondence was directed to the Local Chairman at an address in Lombard, Illinois, rather than Addison, Illinois. The Carrier further represents that the courier company did not notify the Carrier that the letter was undeliverable until January 5, 1996.

Rule 54(b)(1) imposes an obligation on the Carrier to deny the claim within 60 days after the appeal is filed. Since the Local Chairman did not receive a denial letter within the 60 days from receipt of the appeal, the Carrier violated Rule 54(b)(1). The Carrier failed to comply with the 60-day time deadline because it committed a clerical error. The error is entirely the responsibility of the Carrier because the Local Chairman's correct address was prominently displayed on his appeal letter. Furthermore, the Carrier chose the mode of conveyance and, so, it must bear responsibility for any breakdowns in the delivery service that it selects. The Carrier had many ways to insure that delivery was actually effected or to check on the delivery of the November 12, 1995 correspondence. The Carrier elected to solely rely on the single letter without checking on actual delivery. Therefore, it must absorb the consequences of its own clerical error.

Rule 54(b)(1) contains a self-executing remedy when the Carrier breaches the 60-day time limit. The mandatory language of the rule provides that the claim "... shall be considered valid and settled accordingly. . . ." [See, also, First Division Award 24782.]

Therefore, this claim shall be sustained as presented for the period prior to Claimant's reinstatement to service.

### AWARD

Claim sustained.

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**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of First Division

Dated at Chicago, Illinois, this 14th day of July 1998.