

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36365
Docket No. SG-36192
03-3-00-3-389

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(CSX Transportation, Inc. (former Baltimore and
(Ohio Railroad Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (B&O):

Claim on behalf of W. M. Sheckles, Jr., M. T. Gaver, J. D. White, V. K. Kennedy, B. L. Watkins, M. A. Tarleton, T. E. Painter, J. L. Eagle, Jr., R. W. Graves, and D. P. Sweitzer for payment of 791 hours at the straight time rate. Account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, CSXT Labor Agreement No. 15-18-94, and Side Letter No. 2 of the November 17, 1994 Agreement, when in December of 1998 and January of 1999 Carrier permitted System Signal Construction Gangs, who are not covered by the B&O Agreement, to perform pole line maintenance on the Old Main Line Subdivision between Mile Post 18.3 and Mile Post 64.0, and deprived the Claimant of the opportunity to perform this work. Carrier also violated Rule 54 of the current Agreement when it failed to respond to the initial filing of this claim in a timely fashion. Carrier File No. 15(99-76). BRS File Case No. 11376-B&O."

FINDINGS:

The Third 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.

There exists in this case an alleged procedural defect that must be addressed before any consideration is given to the merits - or lack thereof - of the penalty claim.

From an examination of the chronology of handling of the dispute, it is apparent that the initial claim as presented by the Organization was dated January 26, 1999, and requested payment of 791 hours at the straight time rate of pay to be divided equally among the named Claimants. This penalty claim was sent to the Carrier via Certified Mail. The Certified Mail Receipt shows that the Carrier signed for receipt of the penalty claim on January 28, 1999.

Subsequently, the Carrier denied the claim by letter dated March 31, 1999, which was postmarked on April 2, 1999.

By letter dated April 23, 1999, the Organization appealed the initial claim denial and inaugurated the contention that the initial claim had not been timely denied by the Carrier.

Thereafter, by letter dated June 8, 1999, the Carrier's response to the Organization asserted that:

"Our investigation included a review of what you perceive as a time limit violation and we have concluded that no such violation exist[s]. The letter written to District Engineer Signals R. L. Sipes was dated January 26, 1999; however, Mr. Sipes did not receive that letter until February 4, 1999. It is true that someone within the CSXT Organization signed for the letter on January 28, 1999 as you contend, but actual receipt of the letter by Mr. Sipes did not occur until February 4th. This being the case, there could not possibly be a time limit violation, inasmuch as Mr. Sipes' letter of March 31, 1999 fell within the time limits as set forth by the schedule Agreement."

These exchanges of correspondence constitute the primary on-property positions of the parties in relation to the alleged time limit violation. After several agreed-upon

extensions of time limits for subsequent on-property handling of the dispute, the parties' positions remained unchanged and the dispute came to the Board for final resolution.

Before the Board, the Carrier - for the first time - advanced the position that the individual who received and signed for the initial claim:

"... was not the office authorized to receive the claim, nor the 'agent' or 'representative' of the District Engineer."

The Carrier, again for the first time, went on to explain and define its relevant definition of an "agent." The Carrier cited with favor the decision rendered by Third Division Award 31893 in support of its argument that the claim "... could not be considered 'filed' until it was received by the Carrier officer authorized to receive it."

The pertinent language of the TIME LIMITS RULE reads as follows:

"RULE 54. TIME LIMITS FOR HANDLING CLAIMS

- (a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer 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 Board reviewed with interest the language of Award 31893 cited by the Carrier. There, in pertinent part, we read:

"It is essential, however, to place a precise definition on when a claim is 'filed' and the obligation of the Carrier to 'notify' the Organization. (Procedures in many other Agreements utilize more precise language.) Here, the Board follows the generally accepted view that filing means the

receipt of the claim by the Carrier, because the Carrier can hardly be expected to take any action until the claim is actually in hand."

From the chronology of events in this case it is apparent that the claim was "filed" when on January 28, 1999, the CARRIER had the claim in hand. The Carrier was thereafter obligated to notify the Organization of the disallowance of the claim within 60 days from the date the claim was filed. This it did not do.

Before the Board, the Carrier for the first time argued:

"... [W]e do not contend that the officer must physically review the letter in order to begin tolling the time limits, but clearly it must be delivered to his office." (Emphasis added)

However, no such language is found in Rule 54. See Third Division Award 30876 relative to a similar contention. In that case the Carrier argued that claims which should have been submitted to a Storekeeper were in fact submitted to a Superintendent and that the time limits should not have begun until the Storekeeper received the claims.

The claim letter in this case was addressed to the officer authorized to receive the claim and was mailed to that officer's regular mailing address. The claim was therefore "filed" when "the Carrier" received the letter as evidenced by the Certified Mail Receipt signed on January 28, 1999. The Carrier's time limit within which to disallow the claim began on that date.

Again for the first time before the Board the Carrier attempted to buttress its position by arguing that the Organization's time limit argument was a secondary item in its progression of the claim and that the Carrier was somehow misled by this. Such an argument is not only made too late, but also belies the facts of record. The Organization pursued the time limit violation issue through all stages of on-property handling to and including its final March 13, 2000 letter to the Carrier. The unresolved dispute was listed with the Board on June 7, 2000. Clearly this is not a misleading tactic by the Organization and would not, in any event, change the clear chronology of events.

Therefore, without examining the merits of this case in any way, we conclude that the violation of the clear and explicit language of Rule 54 requires that this claim

must be "allowed as presented." One of the more learned decisions of the Board on the issue of time limits violations is found in Second Division Award 11927 where we read:

"In examining these Awards, particularly Second Division Awards 7652, 8089, 8243, 9354, 10157, 10880 and Awards 4 and 25 of Public Law Board 3166, we find that the Claims involved were allowed where Carrier failed to comply with applicable procedural time limits. We will not reiterate verbatim the rationale of these decisions except to note that the Board has never considered procedural violations as occupying a lesser status of judicial significance or as a basis for ignoring the sixty (60) day time limit appellate requirements, where the Claim on its face appears without defensible substance. We further note in this connection that had the Organization failed to comply with the Agreement's time limits, the Claim would have also been dismissed in toto on procedural grounds. This would have been so under the explicit language of Article 30, even assuming arguendo that the Claim was on its face meritorious and involved extensive liability. The Sword of Damocles falls both ways. We were not privy to the parties negotiations and hence we are constrained by the applicable provision's language and the decisions of the Division. Article 30, Paragraph C states in pertinent part that if the Superintendent or his designee fails to make his decision within 'such 60 days' the claim or grievance shall be allowed as presented. There are no qualifications, restrictions or waivers appended to this default. For these reasons, and consistent with our decisions in the Second Division Awards cited and the two (2) decisions of Public Law Board 3166, the Claim as presented shall be allowed. We shall not address the merits of the case."

Likewise in this case.

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 Third Division

Dated at Chicago, Illinois, this 14th day of January 2003.