

**NATIONAL RAILROAD ADJUSTMENT BOARD  
FOURTH DIVISION**

Award No. 5050

Docket No. 5041

98-4-96-4-40

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

(The American Railway & Airway Supervisors  
( Association: A Division of TCU

**PARTIES TO DISPUTE:** (

(National Railroad Passenger Corporation (AMTRAK)

**STATEMENT OF CLAIM:**

"It is the Claim and Request of Petitioning Organization that:

1. Carrier has violated the Agreement, and in particular but not limited to, the January 23, 1992 Amendment, when they arbitrarily assigned Mr. M. Howard, Foreman III, to work overtime on various dates performing work normally and routinely done by Foremen II.
2. Because of this violative action, Carrier be required to compensate named Claimants (F. Tosney and others) the hours claimed on the dates specified."

**FINDINGS:**

The Fourth 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.

It is the position of the Organization that it did not receive a timely response to its claim appealed to Carrier's Division Manager II on October 18, 1995. Accordingly, on January 2, 1996, the Organization requested that its claim be allowed as presented because of Carrier's default on its appeal. Carrier responded by letter received on January 3, 1996, asserting that it had responded to the Organization's appeal by letter dated December 15, 1995, denying the claim, but due to secretarial error, it was mailed to the wrong address and had been returned to Carrier. With its letter received on January 3, 1996, Carrier enclosed the envelope showing the letter of December 15, 1995, had been mailed on the same date with a wrong address and returned to Carrier.

Carrier has advanced several excuses for using the wrong address on its response to the Organization's appeal. The address was taken from letterhead used in filing the initial claim, secretarial error and the Organization's failure to furnish a change of address. Normally, any one or all of Carrier's excuses would serve to properly excuse failure of the Organization to receive timely denial of its claim appeal. However, in the instant case this Board does not find any one of the excuses acceptable for the reason that Carrier was put on notice that it was using an improper address when its October 31, 1995, letter acknowledging receipt of the claim appeal was returned to it account undeliverable at the address it was using. Carrier had at least 30 days between return of the October 31, 1995, letter and the mailing of its December 15, 1995, letter of denial to obtain the correct address. Obviously, it made no effort to do so, and its failure makes it accountable for failure to deliver a timely denial of the claim appeal to the Organization.

In Second Division Award 12345, the Board held:

"Placing a letter in the U.S. Mail generates a strong presumption that the letter will be delivered. However, before such a presumption can be developed it is necessary to demonstrate that a letter was actually properly addressed and deposited in the mail with correct postage."  
(Emphasis added)

No effort was made here to ascertain the correct address, and accordingly, Carrier failed in its responsibility to timely deliver its denial of the Organization's claim appeal.

The claim will be sustained as presented except for the dates of June 12 and 13, 1995, which were not timely filed with Carrier and as such are not properly before the Board. We make no findings on the merits.

**AWARD**

Claim sustained in accordance with the Findings.

**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 Fourth Division

Dated at Chicago, Illinois, this 23rd day of June 1998.