

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33320
Docket No. SG-34646
99-3-98-3-300

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

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former
(Louisville & Nashville Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville & Nashville Railroad:

Claim on behalf of J. M. Phegley for reinstatement to service and for payment for all time lost as a result of his removal from service on January 7, 1997, account Carrier violated the current Signalmen's Agreement, particularly Agreement No. 15-045-94, when it disqualified the Claimant from his position. Carrier also violated Rule 54 when it did not provide notice of the disallowance of the claim within the time limits. Carrier's File No. 15(97-103). General Chairman's File No. 97-71-01. BRS File Case No. 10430-L&N.”

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.

The claim as originally presented in this dispute reads, in pertinent part, as follows:

"Please accept this claim on behalf of Signalman J. M. Phegley, ID #182675. The Claimant is assigned to System Signal Gang 7V17, which works from 0700 a.m. until 1745 p.m. Tuesday through the following Tuesday, with the following six days, and Holidays, as rest days. Their assigned territory is limited under Rule #51 on the L&N System. Their assigned meal period is as stipulated in Rule #11 of their respective Agreement.

Item 1.

This claim was filed due to the Carrier's violation of the present working Agreement Between The Former Louisville And Nashville Railroad Company And Its Employees Represented By The Brotherhood Of Railroad Signalmen, as amended, and, in particular Rule #55, and CSXT Labor Agreement No. 15-045-94.

Item 2.

The Carrier violated these Agreements starting with the date of 1-7-97, and continues to do so, as the Carrier removed the Claimant from the Carrier's service, without pay.

This claim should therefore be considered as a 'continuous claim' starting with the above date, and continuing until which time the Claimant has been returned to the Carrier's service.

* * *

Due to all of the above the Carrier should now afford the claimant an amount equal to 240 hours pay at his respective rate of pay for the time that he has already missed. The Carrier should also afford the Claimant an additional ten hours pay for each date in the future that he is withheld from service, on his assigned work days, until which time the Carrier has corrected their violation of the Agreements. Please advise as to when he

may expect his just compensation and as to when he may return to service.”

This claim was presented to the Carrier via certified mail dated February 25, 1997.

The claim as progressed to Carrier’s highest officer designated to handle claims and grievances was dated June 3, 1997, was sent via certified mail and reads, in pertinent part, as follows:

“Please accept this appeal of a claim filed on behalf of Signalman J. M. Phegley, ID #182675. The Claimant is assigned to System Signal Gang 7VI7, which works from 0700 a.m. until 1745 p.m. Tuesday through the following Tuesday, with the following six days, and Holidays, as rest days. Their assigned territory is limited under Rule #51 on the L&N System. Their assigned meal period is as stipulated in Rule #11 of their respective Agreement.

Item 1.

This claim was filed due to the Carrier’s violation of the present working Agreement Between The Former Louisville And Nashville Railroad Company And Its Employees Represented By The Brotherhood Of Railroad Signalmen, as amended, and, in particular, Rule #54, #55, and CSXT Labor Agreement No. 15-045-94.

Item 2.

The Carrier is also now in violation of Rule #54 in that the office of Signal Engineer Sipes has failed to answer our ‘certified letter of claim’ dated 2-25-97, and signed for by his office on 2-27-97. A copy of this is included for your reference.

This rule contemplates that if the Carrier fails to answer the letter of claim within the time limits as outlined within the rule, the claim will be allowed as presented. The Carrier has failed to answer this claim as of this date.

Notwithstanding the above, the Carrier violated these Agreements starting with the date of 1-7-97, and continues to do so, as the Carrier removed the Claimant from the Carrier's service, without pay.

This claim should therefore be considered as a 'continuous claim', starting with the above date, and continuing until which time the Claimant has been returned to the Carrier's service.

* * *

Due to all of the above the Carrier should now afford the claimant an amount equal to 240 hours pay at his respective rate of pay for the time that he has already missed. The Carrier should also afford the Claimant an additional ten hours pay for each date in the future that he is withheld from service, on his assigned work days, until which time the carrier has corrected their violation of the Agreements. Please advise as to when he may expect his just compensation and as to when he may return to service."

The Organization's entire presentation to the Board concerns its position that the Carrier did not comply with the time limit requirements of the negotiated Agreement. The time limits Rule reads, in pertinent part, 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 of the Carrier authorized to receive same, within sixty (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 sixty (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."

During the on-property handling of the dispute, Carrier alleged that it had, in fact, replied to the February 25, 1997 claim by letter dated April 25, 1997. There is no evidence in the case file to establish that Carrier provided a copy of the April 25, 1997 letter of denial to the Organization. However, a copy of that letter is found in Carrier's Submission to the Board. There is no evidence found in the case record to establish the manner used to send the April 25, 1997 letter to the Organization.

From the evidence found in the case file, it is uncontroverted that Claimant was, in fact, out of service from January 14, to February 4, 1997, at which time he was returned to service. The record further reveals that Claimant's seniority was ultimately terminated on July 7, 1997, for reasons other than those involved in this dispute.

The Board's primary concern in this case is the position of the parties relative to the alleged time limits violation. Boards of Adjustment have previously held that time limits must be applied as written; that they cannot be interpreted on the basis of equity; and that they are not intended to provide a technical defense for either party when no meritorious defense is available. Boards have also held that a party alleging the sending of a letter must offer some proof that it was sent (Third Division Awards 10173, 11505, 20763, 24185, 25309, 30785, 31759).

In this instance there is nothing more than an unsupported assertion that a denial of the initial claim was made on April 25, 1997. As previously noted, there is no evidence to even suggest that Carrier offered to provide a copy of the denial notice when the case was being handled through the grievance handling procedures on the property. In Third Division Award 25309, the Board held:

"The central issue in the case at bar, lies not in the merits of the case, but in the procedural issue of the alleged time limit violation and the conflicting evidence in the record as handled on property. The Organization claims that it never received the letter of April 5, 1979 to disallow the claim. The Carrier claims that the letter was sent by the U.S. postal service and it produced a copy of the letter from its files, unsigned by the Division Engineer, which responds to the undated letter of March 5, 1979 and denies the claims.

In ruling on this procedural issue, this Board must consider both precedent and substantial evidence of record. There is considerable past precedent

that it is the responsibility of Carrier to unequivocally assure that letters of declination are properly delivered to the appropriate organization official within the stated time limits (Third Division Awards 10173; 11505; 14354; 16163; 25100). With respect to substantial evidence, this Board has long held that assertions alone that letters have been mailed will not suffice. Specific to the case at bar where such problems have already occurred, it is even more incumbent that attention be paid to the issue of meeting the evidence test that such letters were sent as argued. Carrier assertions alone that letters were mailed, even when copies of such letters are produced, do not provide the necessary evidence required in cases of dispute which come before this Board (see Third Division Awards 17291, 10173, 10742)."

That opinion is equally applicable in this case. Therefore, to the extent that Claimant was out of service from January 14, to February 4, 1997, he is, by default, entitled to compensation as claimed. The other aspects of the Statement of Claim, however, are denied.

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 Third Division

Dated at Chicago, Illinois, this 17th day of May 1999.