

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24269
Docket Number SG-24246

Martin F. **Scheinman**, Referee

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE:

[National Railroad Passenger Corporation

STATEMENT OF CLAIM: "Claim of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corporation:

On behalf of Assistant Signal Maintainer D. Tarasevich, account Carrier assigned a junior employee to the Mystic, Connecticut, signal maintainer position: (1) for the difference in pay between Assistant Signal Maintainer and Signal Maintainer, (2) all overtime pay earned by any Signalman or **Signal** Maintainer on the Mystic territory and (3) **pay** at the going rate for the use of his private vehicle traveling between the Mystic Signal Maintainer's headquarters and his home (daily distance **14** miles) -- all this to be paid **from** the effective date of this award, December 10, **1979**, to the date this violation of the Signalmen's Agreement is corrected."

OPINION OF BOARD: This claim arises **from** the failure of Carrier to award the position of Signal Maintainer at its **Mystic**, Connecticut facility to Claimant, D. Tarasevich, in December **1979**. Claimant **was an** Assistant Signal **Maintainer**. He bid for the position when it was posted via Bulletin **154-79** on November 27, **1979**. However, Carrier awarded the position to Signalman **D. Brown**, who was junior to the Claimant **on** the Signalmen's roster.

As a result of Carrier's actions, **Claimant** filed this claim allegedly on January 2, **1980**. Carrier denied the **claim** on April 23, **1980**. That denial was appealed by the Organization. **The** claim is now before this Board for adjudication.

The Organization maintains that Carrier's denial of the claim on April 23, **1980** violated Article V of the August 21, **1954 Agreement**. **That** article reads, in relevant part:

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(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 Organization asserts that the claim was obviously denied **more** than sixty days after it was filed, since it was filed on January 2, 1980 and denied on April 23, 1980. Thus, **according** to the Organization, the claim must be allowed as presented and Claimant is to be compensated for 1) the difference in pay between Assistant Signal **Maintainer** and Signal Maintainer, 2) any **overtime** pay earned by any Signalman or Signal **Maintainer** on the Mystic territory and 3) the going mileage rate for the use of his private vehicle between the Mystic Signal Maintainer's headquarters and his **home** retroactive to December 10, 1979.

Carrier, on the other hand, disputes **Claimant's** contention that he actually filed a **claim** on January 2, 1980. While it acknowledges receipt of a registered envelope, it argues that the envelope **did not contain** the claim. In addition, **it** argues that the claim, even if sent in the registered envelope, was not properly submitted to its officer designated to receive same. As such, Carrier concludes that the claim should be denied on procedural **grounds**.

This claim must be sustained **in part**. The record evidence reveals that **Claimant** properly filed this claim on January 2, 1980. The receipt, by **Carrier**, of a registered envelope raises the **presumption** that it contained a proper document. **That** presumption has not been rebutted here. Thus, we conclude **that** the claim was filed on January 2, 1980.

The record also clearly reveals that the claim was denied by Carrier on April 23, 1980, more than sixty days after it was **filed, in** violation of Article V of the Agreement. Therefore, as Article V requires, the **claim** must be allowed as presented from the date it was filed - January 2, 1980.

However, Carrier's liability is not infinite. As the National Disputes **Committee ruled in Decision No. 16**, "(the) receipt of the carrier's denial letter ... stopped the carrier's liability arising out of its failure to comply with Article V of the August 21, 1954 Agreement". **Here** Carrier's denial of the claim was dated April 23, 1980. Thus, Carrier's liability should cease on April 23, 1980, the presumed date of the Organization's receipt of Carrier's denial.

FINDINGS: The **Third** Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the **whole** record and all the evidence, finds and holds:

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and Employes within the meaning of the **Railway Labor Act**, as approved **June 21, 1934**;

That this Division **of** the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained **in** accordance with the **Opinion**.

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

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated **at** Chicago, Illinois, **this 23rd** day of **March 1983**.