

The Third Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

PARTIES TO DISPUTE: (Charles J. Chotkowski
(
(Soo Line Railroad Company

STATEMENT OF CLAIM:

"Claim of Charles J. Chotkowski for a lump sum separation payment equivalent to 360 times the daily rate of the position to which assigned, account his position of Operator at Shoreham was abolished on August 8, 1986."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

The record shows that Claimant was formerly employed by the Carrier as a Train Order Operator at Carrier's Shoreham Yard in Minneapolis, Minnesota. Claimant's position was abolished on August 8, 1986. On October 4, 1986, he presented a Claim to the Carrier's Manager-Twin City Agency for a lump sum separation allowance equivalent to 360 times the daily rate of the position that was abolished on August 8, 1986. In the Claim he stated:

"My claim is made under the provisions of the implementing agreement for direct control of train movements, effective July 1, 1985. The abolishment of my position was related to the implementation of direct control on lines extending from Shoreham."

The Claim was denied by the Manager-Twin City Agency on November 19, 1986.

On May 15, 1987, Claimant appealed his Claim to the Vice President Labor Relations & Personnel. In his appeal to the Vice President, Claimant

contended that he had appealed his Claim to the Division Superintendent, on January 17, 1987; that his appeal had never been denied; and that the Claim was payable under the Time Limit Rule. On June 3, 1987, the Carrier's Vice President, Labor Relations & Personnel, responded to Claimant:

"Upon inquiry into this matter, we have been advised that Mr. D. H. Nelson has no record of ever receiving a request for a separation allowance from you and this office does not consider your request for separation to be a claim."

On March 3, 1988, the Vice President Labor Relations & Personnel wrote Claimant confirming a telephone conference with Claimant on February 29, 1988, in which the Carrier reiterated its position that the alleged appeal letter by Claimant dated January 17, 1987, was not received by the Division Superintendent and that the Implementing Agreement to consolidate Shoreham and St. Paul Yard contained no provision for separation allowances.

The record shows that on November 14, 1986, Claimant resigned from the service of the Carrier.

In his Submission to this Board the Claimant insists that the Claim be allowed as presented because the alleged appeal of January 17, 1987, was not denied within sixty days. The Carrier reiterates its position that it has no record of receiving a request or appeal letter from Claimant.

Numerous Awards of this Board have held that where the addressee denies receipt of a Claim or a denial within sixty days, it is then the responsibility of the addressor to ensure receipt by the addressee within the time limit. (Third Division Awards 11505, 25417 and others cited therein, Fourth Division Award 3760). The Claimant has not proved receipt of the letter of January 17, 1987, by the Carrier. Therefore, we must find that the Claimant did not timely process the Claim. The Claim could properly be dismissed by the Board. However, rather than dismiss the Claim, it will be denied because the Claimant's job abolishment was unrelated to the implementation of train control movement procedures since this was a consolidation with the Milwaukee Road and did not trigger separation allowances.

A W A R D

Claim denied.

Form 1
Page 3

Award No. 27787
Docket No. MS-28350
89-3-88-3-87

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1989.