

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32037
Docket No. SG-32568
97-3-95-3-491**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

Claim on behalf of W. C. Wayne for payment of the difference between the maintainer and inspector rates, beginning February 25, 1994, account Carrier violated the current Signalmen’s Agreement, particularly Rule 4, when it improperly classified a position at Conway Yard as an Assistant Supervisor position. Carrier also violated Rule 4-K-1(a) when it did not provide notice of its disallowance of the claim within 60 days of the date the claim was filed. Carrier’s File No. SG-795. General Chairman’s File No. RM2643-2-994. BRS File Case No. 9603-CR.”

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.

As Third Party in Interest, the United Railway Supervisors Association was advised of the pendency of this dispute, but it chose not to file a Submission with the Board.

On February 25, 1994, Claimant was assigned to a position of Signal Maintainer with headquarters at Carnegie, Pennsylvania. The instant claim was filed with Carrier by certified letter dated March 19, 1994, asserting violation of the Signalmen's Classification Rule when a management employee was used to perform work covered by the Classification Rule, and direct Signal Maintainer's work at Conway Yard.

Failing to receive a response to its claim within 60 days, the Organization by letter dated June 24, 1994, notified Carrier of its failure and requested that the claim be paid as presented in accordance with Rule 4-K-1(a). Copy of the return receipt for the initial claim letter of March 19, 1994, was included with the letter.

Carrier responded by letter dated August 24, 1994, asserting that the initial claim was denied by letter dated April 5, 1994, but did not offer a copy of its letter nor furnish any other evidence of its alleged response dated April 5, 1994.

The claim was discussed in conference on November 8, 1994, but the parties could not reach a satisfactory resolution. In fact, it is noted that Carrier in its confirmation letter of December 29, 1994, raised a procedural objection alleging that the claim was procedurally defective and void at its inception as it did not allege a specific agreement violation. Further, the Carrier argues that the claim is lacking in essential detail needed to be properly addressed and considered.

The Carrier's confirmation letter also states that "the initial claim was properly denied (copy attached) within 60 days under Rule 4-K-1(a)." The Board notes, however, that the Organization by letter dated February 1, 1995, put the Carrier on notice that it had never received the alleged April 5, 1994, denial letter when it stated "The Carrier claims to have responded by letter dated April 5, 1994 which has not been received or attached as claimed."

The record of handling on the property fails to reveal that Carrier furnished the Organization with copy of its April 5, 1994, letter denying the claim, at any time during the handling on the property, even though the Organization put it on notice several times during the handling that it had not received the letter. Further, Carrier had an opportunity to hand the Organization a copy during conference, but the record does not indicate that it did.

From the Board's study of the record of handling on the property, it is convinced that Carrier does not come before the Board with clean hands. We say this for the reason that Carrier attaches copy of the alleged letter of April 5, 1994, to its submission as Exhibit 2. At the top of the letter on the left-hand side of the page we note: "Certified Return Receipt P 016 430 683." No receipt is attached and no mention was made during the handling that the letter of denial was sent "Certified Return Receipt," and further, Carrier made no special effort to furnish the Organization with a copy of the letter during the handling on the property.

From the record, this Board can only conclude that Carrier failed to comply with the provisions of Rule 4-K-1(a) reading:

"4-K-1. (a) All grievances or claims other than those involving discipline must be presented, in writing, by the employee or on his behalf by a union representative, to the Supervisor-C&S (or other designated supervisor), within sixty (60) calendar days from the date of the occurrence on which the grievance or claim is based. Should any such grievance or claim be denied, the Supervisor shall, within sixty (60) calendar days from the date same is filed, notify whoever filed the grievance or claim (employee or his representative) in writing of such denial. If not so notified, the claim shall be allowed as presented."

The procedural objection put forth by the Carrier asserting that the claim was defective and void at its inception is without foundation. The Board's review of the claim filed March 19, 1994, reveals that essential details needed for Carrier to properly address the claim were contained in the Organization's letter along with citation of the Agreement provisions violated as evidenced by that part of the letter reading:

"Just by the nature of his position as Asst. Supervisor, directly directing a maintainer, Conrail is in violation of the current BRS-CRC Agreement, specifically (sic) under classifications, page 4. Inspector: An employee assigned to direct the work of employees and to inspect the facilities, equipment or apparatus installed, maintained or repaired by employees under this agreement and to perform the C&S 27 Tests (See Appendix 'E')."

The Organization and the Carrier referred this Board to numerous prior Awards as supporting their respective position on the procedural issues discussed herein. Some of the Awards involved the parties to this dispute. The Board reviewed all of the Awards

and concluded that those cited by the Organization were more on point with the facts of record in this case. (See Third Division Awards 27501 and 30785).

Numerous prior Awards have held that the burden of proving that correspondence was timely prepared and sent rests upon the shoulders of the party asserting it sent the correspondence. As noted herein, Carrier failed to bear its burden of proof.

Rule 4-K-1(a) (supra) is a self-executing Rule as it specifically states that if a claim is to be denied, Carrier will do so within 60 days of the date filed and failing to do so, the claim will be allowed as presented. The Board will comply with the mandate of the Rule. The claim as presented will be allowed. We will not address 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 Third Division**

Dated at Chicago, Illinois, this 6th day of May 1997.