Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Award No. 3234
Docket No. 3163

Referee Dana E. Eischen

PARTIES TO DISPUTE: Railroad Yardmasters of America

The Atchison, Topeka and Santa Fe Railway Company - Coast Lines

STATEMENT OF CLAIM: Claim and request of Railroad Yardmasters of America that:

Yardmaster C. M. Hoagland be allowed 8 hours at Yardmaster rate for August 22, 1973 account Trainmaster issuing instructtions to switch crew working at Rivera.

OPINION OF BOARD: The instant claim as originally filed alleged a violation of the Yardmasters Scope Rule. Review of the record, however, shows that the claim reaches our Board with the joined issue limited to the Organization's allegation that Carrier violated Article X, Section (a) of the July 1966 Agreement (Time limit rule). Specifically, the Organization apparently asserts that Carrier failed to decline the claim within 60 days from when the initial denial was appealed by the Local Chairman to the General Manager; thereby invoking the last sentence of the Agreement section supra: "If not so notified, the claim or grievance shall be considered valid and settled accordingly, but this shall not be considered as precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

Careful review of the record shows that the claim initially was filed on August 24, 1973 and declined by letter dated October 11, 1973. The Local Chairman by letter dated October 18, 1973 appealed the declination to Carrier's General Manager. By letter dated December 14, 1973 the General Manager declined the appeal, with copy to the General Chairman. The Local Chairman asserts that he did not receive the denial letter until December 20, 1973 and there is no evidence submitted to show when the General Chairman received his copy. By letter dated December 19, 1973 the General Chairman asserted a violation of the 60-day rule of Article X, Section (a) and demanded payment of the claim on that basis. Subsequent handling was limited to conflicting contentions regarding the alleged time limit violations.

We have reviewed carefully the positions of the parties and the Agreement language. While not enunciated with particularity the position of the Organization appears to be that Petitioner must receive the Carrier's decision within 60 days of either (1) the date of the appeal letter to Carrier, or (2) within 60 days of the receipt by Carrier of the appeal letter. In our judgement these

matters have been resolved adequately by Awards of several Divisions of this Board to wit Award 3656 (Second Division); Awards 10490, 13219, 14695 (Third Division); Award 1717 (Weston); See also First Division Awards 16 366 and 16 739. Consistent with this line of authority we find that the instant claim was in fact declined within the 60 day time limit of Article X, Section (a), with the posting or mailing of the denial letter of December 14, 1973. The claim must be denied.

Finally, we are constrained to reiterate, for the beneift of both parties dicta from Award 3097 of this Division as follows:

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> "As has been pointed out before, use of mail requiring return receipts will put this recurring problem to rest, once and for all, in those relationships where it seems to persist. Until then the parties are doomed to play a form of procedural Russian Roulette, in which cases will be decided by analyzing who has the burden of proving mailing and/or receipt of mail, and whether the burden was sustained. As it is now, the Organization may continually lose justifiable claims even if Carrier's office mishandles the mail, because the Organization cannot establish either that delivery was made or that the Carrier habitually mishandles incoming mail with respect to routing it or to dating it. At times the converse may occur, and Carrier will suffer the consequences. The parties' simple alternative is a foolproof method like certified mail. The Board should not be aflicted with cases like these, which could be so simply disposed of by indisputable proof of receipt of mail."

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FINDINGS:

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

The carrier and the employe involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.

The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: Executive Secretary
National Railroad Adjustment
Board

By: Nancy J. Dever
Assistant Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1975