

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISIONAward Number 3760
Docket Number 3754

Referee Paul C. Carter

PARTIES Railroad Yardmasters of America
TO
DISPUTE: Southern Railway Company

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

A. L. Palmer, Yardmaster City Yard, Knoxville hereby claims eight (8) hours at time and one-half for December 24, 1978 and eight (8) hours at time and one half for December 25, 1978 at yardmaster rate due to job annulled December 24 and 25 and then filled by another employe.

OPINION OF BOARD: At the outset we are confronted with the contention of the Organization that the sixty-day time limit rule was violated by the Carrier. The contention is that the claim was made, dated and delivered to Carrier's Superintendent of Terminals on January 2, 1979, and that letter of denial, while dated February 26, 1979, was not received by the claimant until March 5, 1979, through Company mail. The time limit contention remained an issue throughout the handling of the dispute on the property.

In the first appeal on the property the Carrier's Superintendent denied any violation of the time limit rule "for the reason that only 57 days elapsed from the date of Yardmaster Palmer's letter to the date of Mr. Huckaby's letter denying the claim, which is within the time limit specified by the rule."

The General Manager denied the time limit contention, stating:

"You also allege that the time limits rule was violated by Superintendent of Terminals Huckaby in that Claimant Palmer allegedly did not receive Mr. Huckaby's February 28 declination until March 5, 1979. Mr. Huckaby advises that the messenger picks up and delivers mail to the various offices in the Knoxville Terminal twice each day, and that the practice for many years has been to place the envelope addressed to a yardmaster on the yardmaster's desk at City Yard. Since this is the usual and customary procedure, there is no good reason why Mr. Palmer did not receive the letter when he came to work the night of February 28.

Since the claim was timely declined and delivery made in the usual and customary way, it is clear that the time limit rule was literally complied with."

The Carrier's highest officer of appeals stated:

"Finally, with regard to the contention that Superintendent of Terminals Huckaby did not properly decline the claim to claimant, this is erroneous as you yourself admitted that the declination was rendered on the 57th day (February 28, 1979). This was certainly within the prescribed time limit. Further, we are advised that the declination was handled on February 28, 1979 in the usual manner, that is, placed on the Yardmaster's desk by the messenger. Since Mr. Palmer was on duty on February 28, 1979, and since the declination had been placed on his duty station, there is no reason why he should not have received it before March 5, 1979. I submit that his contention is at least suspect."

Many awards have been issued by the different Divisions of the Board involving the time limit rule of the 1954 National Agreement. Numerous awards 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. See Third Division Awards Nos. 21088, 20763, 18661, 18004, 17999, 16357, 16000, 14354. See also Fourth Division Awards Nos. 3615, 3234 and 3097.

Based upon the record before it, the Board is forced to the conclusion that the Carrier has not proved that denial of the claim was actually received by the claimant within sixty days as required by the time limit rule. General statements, without evidence, do not constitute proof. The claim will be sustained for this reason, without passing upon the merits, and "shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances." (Paragraph (a), Article V.).

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.

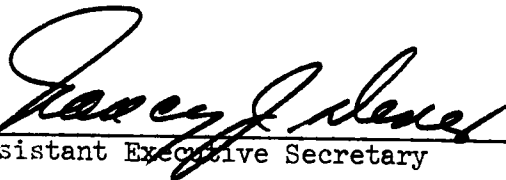
A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:

Executive Secretary
National Railroad Adjustment Board

By: 
Assistant Executive Secretary

Dated at Chicago, Illinois, this 15th day of July 1980