

NATIONAL RAILROAD ADJUSTMENT BOARD  
FOURTH DIVISIONAward Number 4124  
Docket Number 4084

Referee Martin F. Scheinman

PARTIES Railroad Yardmasters of America  
TO  
DISPUTE: Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM: Yardmaster C. Vancil be allowed one day's pay at the yardmaster rate of pay for dates of October 5 and 6, 1981 account Extra Yardmaster Putz was permitted to "old head" (take on temporary) while agreement calls for "old heading" on known three day vacancies. Yardmaster Vancil was first out on extra board on claim dates and should have been called and used.

OPINION OF BOARD: On October 15, 1981, the Organization submitted a claim on behalf of Yardmaster C. Vancil for one day's pay for October 5 and 6, 1981 account Carrier's allowing Extra Yardmaster Putz to take on a temporary vacancy for those days instead of Claimant.

On December 24, 1981, the Organization's Local Chairman, C. R. Weinert, addressed a second letter to Carrier asserting that the original claim had not been answered within the prescribed sixty day time limit and asking, therefore, that the claim be allowed as presented. Thereafter, the claim was processed by the Organization solely on the issue of Carrier's alleged failure to timely answer its original presentation.

Carrier, on the other hand, maintains that it complied with the Agreement's time limits. It asserts that, on November 19, 1981, it sent a letter to Local Chairman Weinert denying the claim. That letter was sent via Company mail. Carrier points out that it is its normal practice to communicate with the Organization through the Company mail system. It notes that Local Chairman Weinert often works at different sites during a given week. Thus, Carrier suggests that it was possible for the Local Chairman not to have received the denial of the claim, even though it was mailed well within the Agreement's sixty day time limit to respond to claims. In all, Carrier concludes that it complied with appropriate procedures here. It asks that the claim be denied.

The issue before us has been well settled in a long line of awards. Generally, when one party contends that a written response has not been received in a timely manner, the burden shifts to the sender of the communication to prove that it was timely mailed. Such disputes can be resolved by the use of the U.S. Registered Mail System, Return Receipt Requested. This system obviously affords clear and documented proof of when communications were sent and received by opposing parties.

Here, Carrier apparently opted to use the internal Company mails to deny the claim. In so doing, Carrier acted at its own peril for it could not validate the timely denial of a claim, if challenged to do so by the Organization.

Carrier argued that it has traditionally used the Company mails to respond to claims filed by the Organization. However, in Public Law Board No. 2046, Award No. 2, Carrier was put on clear notice as to the dangers of its use of such a system. There, the Organization contended that it had not received a response to its appeal of a claim denial within the prescribed sixty day time limit. In finding for the Organization, that Board noted that "... the burden of establishing that the letter of April 27 was transmitted rests with Carrier, (sic) no evidence was submitted to show that that letter was actually delivered or even mailed."

Similarly, no such evidence exists here. Thus, we find that Carrier violated the time limits for answering the claim as set forth in Rule 9 of the Agreement. Accordingly, the claim is sustained.

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

The Carrier and the 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.

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

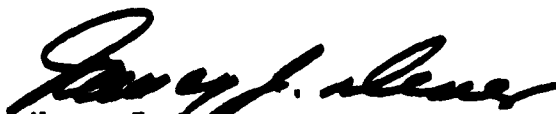
The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

ATTEST:

  
Nancy J. Dever  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May, 1984