

NATIONAL RAILROAD ADJUSTMENT BOARD  
FOURTH DIVISION

Referee Robert M. O'Brien

Award Number 4439  
Docket Number 4267

PARTIES Railroad Yardmasters of America  
TO  
DISPUTE: Consolidated Rail Corporation

STATEMENT  
OF CLAIM:

Yardmaster W. J. Matthias be paid an eight (8) hour day at pro rata rate beginning September 3, 1982 and continuing each and every day thereafter until violation is corrected on account of being unable to exercise his seniority as a yardmaster at South Kearney pursuant to Rule 2-E-1(a).

OPINION  
OF BOARD:

The facts evidence that on September 3, 1982, the Claimant attempted to bump to a Relief Yardmaster position at South Kearney, N. J., but was not allowed to do so. On September 27, 1982, the Claimant's representative submitted a Claim to Trainmaster Neighbor, Claimant's immediate Supervisor. The Claim was mailed to Trainmaster Neighbor, via Certified Mail, at Carrier's Terminal headquarters - 405 Division Street, Elizabeth, N. J. It was received by a Clerk, Mrs. Soveiro, on October 4, 1982. After its receipt by Mrs. Soveiro, the Claim could not be located. It is undisputed that Trainmaster Neighbor never received it.

On December 15, 1982, the Employees wrote to the Carrier advising that the sixty (60) day time limit set forth in Rule 4-K-1(c) had been violated since Trainmaster Neighbor failed to deny the aforementioned Claim within the requisite 60 day period. It is the Employees' contention that the Claim was properly submitted in accordance with Rule 4-K-1(a); and since it was not denied within the 60 day time limit, it must be allowed. The Carrier retorts that the Employees failed to comply with Rule 4-K-1(a) when they addressed their Claim to the wrong address. According to the Carrier, Trainmaster Neighbor's address is Fishhouse Road (or Old Fishhouse Road) So. Kearney, N.J. It submits that Trainmaster Neighbor never received the Claim since it was mailed to the wrong address. Consequently, in the Carrier's judgment, inasmuch as the Claim was not presented in the manner prescribed by Rule 4-K-1(a), it was invalid at its inception.

The central question to be resolved by this Board is whether the Employees complied with the requirements of Rule 4-K-1(a) when it filed its Claim; or whether the Carrier failed to comply with Rule 4-K-1(c) by not denying said Claim within 60 days? Under the particular facts of this Claim, it is our considered Opinion that it was the Carrier that violated the Agreement by not denying the Claim within 60 calendar days from the date the Claim was presented.

Despite what the Carrier avers, we find that the Claim was "presented, in writing, to the yardmaster's immediate supervisor" as required by Rule 4-K-1(a). The Claim was mailed to Claimant's immediate Supervisor, Trainmaster Neighbor, at Carrier's Terminal headquarters and was accepted on his behalf by a Clerk working there. That the Clerk who accepted the Claim was not, in fact, Mr. Neighbor's Clerk; or that she did not even know Trainmaster Neighbor is not relevant to the issue before us. The Clerk certainly could have refused to accept the Certified Letter. By not doing so, she led the Claimant and his representative to assume that she was authorized to accept mail on Trainmaster Neighbor's behalf.

While the Clerk at 405 Division Street, Elizabeth, N.J. may not have been Trainmaster Neighbor's actual agent, she unquestionably acted on his behalf when she accepted the Claim in question by signing the Certified Mail receipt. That this Claim was never submitted to Trainmaster Neighbor was strictly an internal management matter. However, this misplacement of the Claim after it had been received by Mrs. Soveiro did not render the initial claim invalid, in our judgment.

This Board wishes to stress that we are not faced with a situation where an aggrieved employee totally disregarded the work location of his immediate Supervisor when he presented his Claim. Rather, the Claim was mailed to Carrier's Terminal Trainmaster at its Terminal Headquarters. The Claimant was unaware that Trainmaster Neighbor did not work there. Evidently, he had never been furnished Trainmaster Neighbor's correct address.

The language of Rule 4-K-1(c) is quite explicit. Since the Claimant in question was not notified, in writing, within 60 calendar days from the date his Claim was presented that it had been disallowed, the Claim must be allowed without addressing the substantive issues raised by said Claim. Naturally, damages are limited to the period September 3, 1982 - October 12, 1982, the date on which the Claimant resigned as a Yardmaster.

FINDINGS:

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

The Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 were granted the privilege of appearing before the Division, with the Referee sitting as a member thereof, to present oral argument.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

ATTEST:



Nancy J. Dever  
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of May 1986.