

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Referee Eckehard Muessig

Award Number 4577
Docket Number 4541

PARTIES TO: United Transportation Union - Yardmasters Department

DISPUTE: The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Yardmaster R. Augustine claiming one day's pay at punitive rate for February 3, 1985 for not being called to supervise the crew of Ohio Junction Turn on third shift Hazelton, Ohio. Carrier failed to timely reply to claim violating Article 21(a).

OPINION OF BOARD: The essential facts are not in dispute. The Claim at issue was received by the Carrier on February 7, 1985. The denial of the Carrier was postmarked April 8, 1985 and was received by the Organization on April 11, 1985. The question before the Board is whether the Carrier complied with Article 21, Claims or Grievances which reads:

"(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the Officer of the Carrier authorized to receive same, within 60 calendar days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within 60 calendar days from the date same is filed, notify the employee or his representative of the reasons for such disallowance. If not so notified, the claim or grievance shall be considered valid and settled accordingly, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

The Carrier essentially argues that the controlling Article requires that the Organization be notified (as distinguished from receive) of the action within 60 days. Under its construction, because the declination letter was posted on the 60th day (April 8) from the date of receipt (February 7), the Claim was properly and timely denied.

The Organization principally contends that "notify," as used in Article 21(a), means receipt of the Claim or receipt of the decision. In arriving at its construction of the language at issue it mainly relies upon the National Disputes Committee (NDC) Decision No. 16.

Both parties have submitted numerous past Awards which they argue support their respective positions in this matter. We have thoroughly studied these before arriving at our determination in this matter.

We agree with the Organization with respect to its time limit arguments. Rule 21 flows from the 1954 National Agreement. NDC Decision No. 16, a mutually agreed-upon interpretation, held that "notify" was meant to be "receipt" by the Carrier and the Organization.

With respect to the monetary portion of the Claim, we again embrace the pro rata concept as the measure of work lost, thus the Claimant will be awarded eight hours of pay at the straight time rate.

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 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 15th day of October 1987.