

PUBLIC LAW BOARD NO. 5046

UNITED TRANSPORTATION UNION
YARDMASTER'S DEPARTMENT

VS.

CSX TRANSPORTATION, INC.

Award No. 4
Case No. 4

QUESTION AT ISSUE:

"Claim of Yardmaster G.E. Held, of Queensgate Yard, Cincinnati, Ohio, for all earnings he would have made as a yardmaster between the dates of July 17, 1991 and August 23, 1991, inclusive, account of the Carrier disqualifying him as a yardmaster.

FINDINGS:

In this case, there exists a threshold issue which must be addressed before any examination or consideration of the merits issues and arguments can be reached.

From this case record, it is apparent that a claim was presented to the Carrier's Division Manager under date of August 23, 1991, on behalf of Claimant which read, in pertinent part, as follows:

"This is a continuous time claim for G.E. Held #2608992 because a younger man was assigned to the guaranteed extra board and Mr. Held stood for the position from July 17 to August 23.

Please allow all money he would have stood to earn - both straight time and over time."

This claim was answered and disallowed by the Carrier's Division Manager by letter dated October 22, 1991. In the letter of disallowance, the Division Manager acknowledged that the August 23rd claim letter had been received by the Carrier on August 24, 1991. It is argued by the Union, and not challenged by the Carrier, that the October 22, 1991, letter of disallowance was received by the Union representative on October 24, 1991.

Neither party to this dispute has presented any documentation, proof of mailing, postmarked envelopes, etc. to support the sent/received dates stated above. This Board, therefore, accepts these sent/received dates as factual and correct.

On this property, there exists a negotiated rule which reads, in pertinent part, as follows:

"ARTICLE 21

CLAIMS OR GRIEVANCES

(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 Union has argued both during the on-property handling of this claim and before this Board that the claim in this instance was "presented in writing" to the Carrier on August 24, 1991 -

the date it was received by Carrier. They further argued that this claim was not disallowed "within 60 calendar days from the date same is (was) filed." The Union contended that from August 24, 1991, to and including October 24, 1991, is more than 60 calendar days and therefore the claim is payable by default without consideration of the merits.

Strangely, the Carrier has offered nothing - either during the on-property handling of the claim or before this Board - to explain their position on or to defend their actions in relation to this time limit contention which has been raised and pursued by the Union at all levels of handling of the claim.

It is too well established to require citation of authority that the time limits provisions in a negotiated contract MUST be complied with by all parties. If a claim is not presented - that is received by the Carrier - within 60 calendar days from the date of occurrence, it will be dismissed as untimely. Conversely, if a properly presented claim is not disallowed within 60 calendar days from the date received, it will be "considered valid and settled accordingly."

Section 3, R.L.A. Boards of Adjustment has held that:

"Nevertheless, this Board follows Decision No. 16 of the National Disputes Committee and the large number of Awards that have thereafter held that notification requires receipt. As stated by Fourth Division Awards 4309 and 4310:

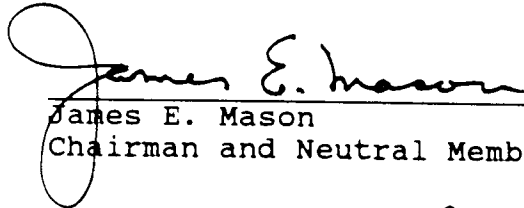
`. . . the common and ordinary meaning of the word 'notify' denotes delivery to and receipt by the party to be notified. Therefore, a claim is 'filed' with the Carrier when it is received by the Carrier and the Claimant is 'notified' by the


Carrier when the disallowance is received by the Claimant.'" (from 4th Division N.R.A.B. Award No. 4586 involving these same parties)

Therefore, we will not address the merits - or lack thereof - in this case. It must be considered valid and settled accordingly because of the Carrier's failure to comply with the provisions of Article 21(a).

AWARD:

Claim sustained in accordance with the Findings.


James E. Mason
Chairman and Neutral Member


N.B. Gryssom
Carrier Member


R.C. Arthur
Employee Member

Issued at Palm Coast, Florida

4-16-93