

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43041
Docket No. MW-43887
18-3-NRAB-00003-160696**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

**(Kansas City Southern Railway Company (former
(South Rail Corporation)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when, commencing March 30, 2015 and continuing through May 27, 2015, the Carrier directed Claimant A. Clark to perform service prior to his assigned starting time and after his assigned quitting time and failed to offer any compensation whatsoever (System File C 15 03 30/K0415-6080 SRL).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant A. Clark shall ‘... be compensated four (4) hours’ time and one half rate of pay for forty four (44) days which totals \$7267.92 for the Machine Operator plus late payment penalties based on a daily periodic rate of .0271% (Annual Percentage Rate of 9.9%) calculated by multiplying the balance of the claim by the daily periodic rate and then by the corresponding number of days over sixty (60) that this claim remains unpaid.’”**

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Parties to said dispute were given due notice of hearing thereon.

The Board cannot reach the merits of this dispute because the claim was amended during the progressing of the dispute to the Board.

By claim dated May 27, 2015, the Organization asserted that the Claimant was entitled to compensation under Rule 23(e) (Mobile Gang and Expenses) for performing certain duties.

By letter dated July 29, 2015, the Carrier advised the Organization that the relied-upon language quoted by the Organization was not from Rule 23 of the governing Agreement, but was from a February 19, 1988 Letter of Understanding which was subsequently modified in 2002. The Carrier advised the Organization that there was nothing in the current language in Rule 23 governing expenses that would allow for payment of the Claimant's time.

By letter dated September 22, 2015, the Organization appealed asserting that "... Rule 23 was erroneously quoted by the Organization and the letter of understanding dated February 19, 1988 would apply."

By letter dated November 17, 2015, the Carrier denied the claim again, asserting that the claim was defective.

By letter dated July 19, 2016 (post conference), the Organization asserted that "... this is an overtime dispute ...", for the first time relying upon the overtime provisions in Rule 10 (Overtime).

With the ultimate argument that this is an overtime dispute which the Organization argues to the Board (Organization Submission at 3-6 quoting Rule 10 (Overtime) and arguing the merits on an overtime theory), the Organization has

effectively attempted to amend its original claim, For all purposes, the attempted amendment is a new and untimely claim filed and first raised over a year after the claim arose. That claim cannot now be considered.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 2nd day of May 2018.