

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43047  
Docket No. MW-44009  
18-3-NRAB-00003-170069**

**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 May 28, 2015 and continuing through July 16, 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 05 28/K0415-6173 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 thirty three (33) days which totals \$6548.85 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.

This dispute is similar to the claim denied by the Board in Third Division Award 43041 (and involves the same Claimant).

By claim dated July 16, 2015, the Organization asserted that the Claimant was entitled to compensation under Rule 23(e) (Mobile Gang and Expenses) for performing certain duties. Ultimately, this matter was progressed to the Board as an overtime claim under Rule 10.

As in Third Division Award 43041, the Board finds that 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 long after the claim arose. For the same reasons discussed in Third Division Award 43041, this claim cannot now be considered.

**AWARD**

**Claim denied.**

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**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.**