

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43281
Docket No. MW-43768
16-3-NRAB-00003-160593**

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference
(
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The claim* as presented by General Chairman D. Albers on September 9, 2014 to Division Engineer R. Elliott shall be allowed as presented because said claim was not disallowed by Director Labor Relations R. Miller in accordance with Rule 24(b) (System File B15709814/2014-175910 CSX).

*The initial letter of claim will be reproduced within our initial submission.”

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 Organization brings this claim to the Board on the premise that it must be sustained without regard to the merits because the Carrier did not comply with the requirements of Rule 24(b) of the Agreement. That provision states:

“A claim or grievance denied in accordance with paragraph (a) shall be considered closed unless it is listed for discussion with the carrier’s Highest Designated Labor Relations Officer by the employee or his union representative within sixty (60) days after the date it was denied. A claim or grievance meeting with the local committee will be placed on the docket for discussion at such meeting. When a claim or grievance is not allowed, the carrier’s Highest Designated Labor Relations Officer will so notify, in writing, whoever listed the claim or grievance (employee or his union representative) within sixty (60) days after the date the claim or grievance was discussed of the reason therefor. When not so notified, the claim will be allowed.”

The record before the Board reflects that the Carrier issued its denial of the claim on November 7, 2014. By letter dated November 19, 2014, the General Chairman wrote to the Carrier’s Director of Labor Relations listing this claim, along with ten others, and requested that they be placed on the docket for discussion. On March 27, 2016, the Vice Chairman wrote to the Director of Labor Relations, stating:

“This letter is a follow-up to the Organization’s conference dated October 7, 2015. At this time I request that you allow the claim as presented based on CSX’s failure to comply with Rule 24 of the Agreement.

In relevant part, Rule 24(b) of the Agreement states that:

*** * ***

As is clearly identified above, CSX had sixty (60) days after the October 6, 7, 8, 2015 claims conference in which to deny our September 9, 2014 claim letter. However, the on-property record clearly establishes that CSX did not deny the claim after the October 6, 7, 8, 2015 conference.”

On April 15, 2016, the Director of Labor Relations wrote to the Vice Chairman, stating:

“This is in reference to Organization’s letter dated March 27, 2016 on behalf of Employee J. Welch, ID 381985 and five other employees. The Organization states in this letter that the Carrier violated Rule 24(b) of the June 1, 1999 System agreement when it did not respond to the Organization’s appeal which was conference on October 7, 2015.

Contrary to the Organization’s contention, the above listed claim was not conference on October 7, 2015. The claim was brought to that conference,

however both parties agreed to relist the claim for a later conference. No denial letter has been sent as the claim has not yet been discussed on property.

Therefore, it is the Carrier's position that this claim be listed and conferenced prior to moving it further."

Before the Board, the Organization questioned whether the April 15, 2016 letter was exchanged on the property. It was included in the Carrier's submission, but not the Organization's. The record before us is insufficient to conclude that the letter is new evidence and argument, which would not properly be before us. We have no reason to believe that the letter was not sent to the Organization.

Based upon this record, the Board finds that the instant claim was not discussed in conference. Therefore, the Carrier would not have been required to issue a final denial of the claim. It is the Board's determination, therefore, that the claim should be remanded to the parties for a conference in accordance with Rule 24(b) of the Agreement.

AWARD

Claim sustained in accordance with findings.

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 26th day of June 2018.