

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43325
Docket No. MW-44532
19-3-NRAB-00003-170684**

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The claim* as appealed by General Chairman Dennis R. Albers, by letter dated October 18, 2016 to VP Labor Relations-Corporate Secretary A. Godderz, shall be allowed as presented because said appeal was not disallowed by VP Labor Relations-Corporate Secretary A. Godderz in accordance with Rule 14 (System File KCS495RR16/K0416-6856 KCS).**

***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.

By letter dated August 1, 2016, the Organization submitted a claim to the Carrier on behalf of 57 employees protesting the assignment of work to an outside contractor (installing road crossings and asphaltting crossings between Mile Post 90 through Mile Post 127 in Ruston and Arcadia, Louisiana) performed by the contractor during the period June 27, 2016 through July 3, 2016.

The Carrier received the claim on August 11, 2016 and by letter dated October 5, 2016, the Carrier denied the claim.

By letter dated October 18, 2016 – received by the Carrier on October 20, 2016 – the Organization appealed the Carrier’s denial.

By letter dated March 15, 2017 – received by the Carrier on March 20, 2017 – the Organization notified the Carrier that the Carrier had not responded to the Organization’s appeal within the contractually designated time limits in Rule 14 (60 days) and stated that the claim should be allowed as presented.

As shown by the Carrier’s letter dated May 18, 2017 which followed an April 26, 2017 claims conference, there is no dispute that the Carrier failed to deny the Organization’s appeal within 60 days. In that letter, the Carrier denied the claim.

The Organization progressed the dispute to the Board solely on the Carrier’s failure to respond to the Organization’s October 18, 2016 appeal within the 60-day time provisions of Rule 14 and not on the merits of the underlying contracting dispute.

For reasons more fully discussed in Third Division Award No. 43323, under Rule 14, the Carrier’s failure to respond to the Organization’s appeal of the Carrier’s denial of the claim within the required 60-day period requires that the claim be sustained as presented. Rule 14 is clear requiring that the Carrier must deny an appeal from the denial of a claim within 60 days and if the Carrier does not do so “... the claim or grievance shall be allowed as presented ...” [emphasis added].

For reasons similarly discussed in Third Division Award No. 43323, the Carrier’s tolling arguments that its liability should end when it ultimately denied the Organization’s appeal – even if considered – would not change the result because the Carrier did not deny the Organization’s October 18, 2016 appeal until

May 18, 2017 and the period of relief covered by the claim is from June 27, 2016 through July 3, 2016 when the contractor performed the work thereby making the Carrier's tolling arguments moot.

Finally, as further discussed in Third Division Award No. 43323, other arguments raised the Carrier also do not change the result.

The bottom line here is that the governing contract language is clear and that language must be enforced even if the results are harsh or unexpected to one of the parties. Third Division Award 35515; First Division Award 24819.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 14th day of December 2018.