

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43380
Docket No. MW-42439
19-3-NRAB-00003-140044 (Old)
19-3-NRAB-00003-180456 (New)**

The Third Division consisted of the regular members and in addition Referee Paul Betts when the award was rendered.

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

PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it changed the starting time of System TRT Gang #8578 to begin at 9:00 P.M. on September 17, 2012 without proper advance notice as required by Rule 31(g) (System File D-1231U-201/M12-UP407).**
- (2) The claim* referenced in Part (1) above, as appealed by Vice Chairman D.Scoville on February 11, 2013 shall be allowed as presented because said appeal was not disallowed by the Carrier in accordance with Rule 49.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the Claimants shall ‘*** be allowed twelve (12) hours straight time pay at their respective rates to compensate them for the shortage suffered when they were not allowed to work their regular shift on September 17th. Further, Claimants shall be paid the difference between their straight time rate and their overtime rate for overtime service rendered between 21:00 and 06:00, or four and one half (4 1/2) hours straight time equivalent. ***’**

***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 issue before the Board is whether the Carrier provided proper notice to change the Claimants' start time per Rule 31(g).

In summary, the Organization argues: A) the Carrier failed to disallow the initial claim per Rule 49, B) the Carrier's action directly violated Rule 31(g), and C) the Carrier's arguments are without merit.

In summary, the Carrier argues: A) the Organization's claim is procedurally defective because it was not presented and handled in the usual manner and because the Agreement does not permit the Organization to amend or perfect its claim, B) the Carrier gave proper notice for the changed start time, C) the Organization failed to meet its burden of proof, and D) the Claimants were all properly compensated for the pay period.

The Board reviewed the procedural arguments raised by both the Organization and the Carrier, and finds the Organization argument to have merit. As such, the claim must be allowed as presented per Rule 49. Rule 49 states:

“(a) All claims or grievances will be handled as follows:

- (1) 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 sixty (60) days from the date of the occurrence on which the claim or grievance is based. The date a claim is presented is the date the claim is sent, as evidenced by postmark, when the U. S. Mail service is utilized. Should any such claim or grievance be disallowed, the Carrier will within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance will be allowed as presented but this will not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances. The date a party is notified is the date written notification is received by the party. The date claim is filed is the date the claim is received by the Carrier's designated officer.

- (2) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within sixty (60) days from receipt of notice of disallowance, and the representative of the Carrier will be notified in writing within that time of the rejection of his decision. The date a party is notified is the date written notification is received by the party. Failing to comply with this provision, the matter will be considered closed, but this will not be considered as a precedent or waiver of the contentions of the employees as to other similar claims or grievances. The date an appeal is taken is the date the appeal is transmitted or dispatched, as evidenced by postmark, when the U. S. Mail service is utilized. It is understood, however, that the parties may by agreement, at any stage of the handling of a claim or grievance on the property, extend the sixty (60) day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose.
- (3) The requirements outlined in Paragraphs 1 and 2, pertaining to appeal by the employee and decision by the Carrier, will govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the carrier to

handle such disputes. All claims or grievances involved in a decision by the highest designated officer will be barred unless within nine (9) months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional Board of Adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the nine (9) months period herein referred to."

The record reveals the Organization filed the initial claim on October 30, 2012, to Engineering Supervisor M. McClure. Mr. McClure denied the claim on December 17, 2012. On December 26, 2012, the Organization advised Supervisor McClure his denial of the claim would be appealed. On February 11, 2013, by letter to Labor Relations Director P. Jeyaram, the Organization appealed the Carrier's December 17, 2012 denial. On May 3, 2013, the Organization advised the Carrier of its failure to comply with Rule 49.

Per Rule 49, the Carrier had sixty days to disallow the Organization's February 11, 2012 appeal. The Carrier failed to do so within the sixty-day period. Although the Carrier argues never receiving the February 11, 2012 appeal, the Organization provided sufficient evidence to support the mailing of the same. As a result, the Board will not address the merits. Under the specific language of Rule 49, the Board is required to allow the claim as presented.

AWARD

Claim sustained.

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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 18th day of January 2019.