

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43448
Docket No. MW-44700
19-3-NRAB-00003-180229**

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

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

PARTIES TO DISPUTE: (

(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Dyer Construction) to perform Bridge and Building (B&B) Subdepartment work (construct and install a new water main) at Gibson Round House beginning on November 16, 2015 and continuing (System File 2016-004 IHB).**
- (2) The Agreement was violated when the Carrier assigned outside forces (Gatlin) to perform B&B Subdepartment work (construct and install a new storm sewer) at Gibson beginning on November 16, 2015 and continuing (System File 2016-005).**
- (3) The Agreement was violated when the Carrier assigned outside forces (La Docsa) to perform B&B Subdepartment work (construct and install a new storm sewer) at Gibson beginning on December 23, 2015 and continuing (System File 2016-010).**
- (4) The Agreement was further violated when the Carrier failed to notify the General Chairman of its intent to contract out the**

work referred to in Parts (1), (2) and/or (3) above and when it failed to make a good-faith effort to reduce the incidence of contracting out scope covered work and increase the use of its Maintenance of Way forces as required by the Scope Rule and the December 11, 1981 National Letter of Agreement.

- (5) As a consequence of the violations referred to in Parts (1) and/or (4) above, Claimants M. Infante, J. Razo and A. Mascote shall now each ‘... be compensated all straight time and overtime hours worked by contractor Dyer Construction beginning on November 16, 2015 at their appropriate straight time and overtime rates of pay. ***’
- (6) As a consequence of the violations referred to in Parts (2) and/or (4) above, Claimants M. Infante, J. Razo and A. Mascote shall now each ‘... be compensated all straight time and overtime hours worked by contractor Gatlin beginning on November 16, 2015 at their appropriate straight time and overtime rates of pay. ***’
- (7) As a consequence of the violations referred to in Parts (3) and/or (4) above, Claimants M. Infante, J. Razo and A. Mascote shall now each ‘... be compensated all straight time and overtime hours worked by contractor La Docsa beginning on December 19, (sic) 2015 at their appropriate straight time and overtime rates of pay. ***’”

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.

On January 13 and February 11, 2016, the Organization filed three separate claims asserting that the Carrier violated the Scope Rule and Rule 1 of the parties' Agreement when it permitted outside contractors to perform work reserved to employees holding seniority in the Maintenance of Way Bridge and Building Department. Due to the identical facts, rules, and evidence relevant to the three claims, the record established on the property by the parties' was presented to the Board as one claim, and therefore, the Findings and Award below apply with equal force and effect to all three claims. The claim was progressed on the property in the usual and customary manner, including placement before the highest officer of the Carrier designated to handle such matters. Following two conference discussions on February 8 and 22, 2017 and denial of the claim by the Carrier, the Organization filed its notice of intent with the Third Division on December 6, 2017. The claim is now properly before the Board for adjudication.

The following contract language from Rule 24 (b) and (c) is relevant to the resolution of this dispute.

"RULE 24 – CLAIMS AND GRIEVANCES, paragraph (b) in pertinent part, reads as follows:

- (b) . . . When claim or grievance is not allowed, the Director of Labor Relations 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 thereof. When not so notified, the claim will be allowed.**

- (c) A claim or grievance denied in accordance with paragraph (b) will be considered closed unless within nine (9) months from the date of the decision of the Director of Labor Relations proceedings are instituted before the National Railroad Adjustment Board or such other Board as may be legally**

substituted therefor [sic] under the Railway Labor Act.”

The Board first addresses the Carrier’s claim of procedural error. It alleges that the claim was not filed in accordance with Rule 24 (c) and therefore, must be dismissed. The record conclusively establishes that the Notice of Intent from the Organization to the National Railroad Adjustment Board (“NRAB”) is dated December 6, 2017, which is more than 16 months after the Director of Labor Relations issued a denial of the appeal on July 26, 2016 and in excess of the nine-month period referenced in Rule 24 (c).

The Organization’s assertion that the Carrier did not properly conference the claims is rejected. The record sufficiently establishes that the matter was discussed in conference on the property before the July 26, 2016 denial of the claim. The subsequent conference with a different Director of Labor Relations, wherein the Organization again sought to resolve the matter, does not toll the time limits to a later date unless there was a written agreement to extend the relevant period. No such agreement is in the record.

There is ample arbitral authority to conclude that where the time limit provisions in an agreement clearly requires the dismissal of a claim when it is filed late, the Board must find that a procedural error occurred and dismiss the matter. Based on the clear language of Rule 24 (c), mandating that the matter be closed if not processed to the NRAB within nine months, the Board finds that the procedural error requires we dismiss the claim and need not address the merits of the dispute.

AWARD

Claim dismissed.

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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 1st day of March 2019.