

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43449
Docket No. MW-44771
19-3-NRAB-00003-180275**

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 (Accurate Masonry) to perform Bridge and Building (B&B) Subdepartment work (masonry tuck pointing) on the Gibson Round House building beginning on November 9, 2015 and continuing (System File 2016-002 IHB).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants M. Infante, J. Razo, A. Mascote, S. Gengnagle and J. Tuttle shall now ‘... be compensated all straight time and overtime hours worked by contractor Accurate Masonry beginning on November 9, 2015 at the appropriate B&B Foreman and B&B Mechanics’ straight time and overtime rates of pay. We would also request that five B&B positions (1 Foreman and 4 Mechanics) be immediately advertised and awarded as prescribed in the CBA. ***’”**

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 8, 2016, the Organization filed a claim 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. 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 a conference regarding the claim on July 22, 2016 and the Carrier's denial of the claim, dated July 26, 2016, the Organization filed its notice of intent with the Third Division on December 27, 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 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 27, 2017, which is more than 17 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 claim is rejected. The record sufficiently establishes that the matter was discussed in conference 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 reach the merits of the dispute.

AWARD

Claim dismissed.

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.