

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 43462
Docket No. MW-43609
19-3-NRAB-00003-160396

The Third Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

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

PARTIES TO DISPUTE: (

(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 November 11, 2014 to Division Engineer L. Moss 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 B14912514/2014-178831 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 filed its initial claim on behalf of employees T. Boyd, B. Lee, G. Shirley and S. McCarty by letter dated November 11, 2014 asserting the Carrier violated the Agreement when it assigned a contractor to perform grass cutting work and a claim for compensation for the Claimant employees as set forth in full detail in the claim letter. The Carrier denied this claim by letter dated January 9, 2015. By letter dated January 29, 2015 the General Chairman listed the claim for discussion with the Carrier's highest designated labor relations officer in accordance with Rule 24(b). The parties discussed the claim at the claims conference on July 29, 2015. By letter dated November 5, 2015 the General Chairman notified the Carrier that CSX did not deny the claim within the sixty day period after the claim was conferenced, as required by Rule 24(b), and stated that the claim should be allowed as presented.

“RULE 24 – CLAIMS AND GRIEVANCES

- (a) A claim or grievance must be presented, in writing, by an employee or on his behalf by his union representative to the Designated Officer, or other designated official within sixty (60) days from the date of occurrence on which the claim is based. The Designated Officer, or other designated official shall render a decision within sixty (60) days from the date same is filed, in writing, to whoever filed the claim or grievance (the employee or his union representative). When not so notified, the claim will be allowed.
- (b) A claim or grievance denied in accordance with paragraph (a) should 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.”

(emphasis added).

The Carrier failed to offer proof that it notified the union representative in writing within sixty (60) days after the claim was discussed that the claim was not allowed and the reason therefor. The Carrier's denial letter dated September 10, 2015, which was attached to the Carrier's Labor Claims Action Tracking file is not proof of compliance with Rule 24(b). No evidence such as a postmark or other confirmatory means shows that the Carrier complied with Rule 24(b). When not so notified, the claim is allowed, as presented in the November 11, 2014 claim letter.

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 1st day of March 2019.