

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43467
Docket No. MW-43896
19-3-NRAB-00003-160682**

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 Agreement was violated when, on November 8, 2014, the Carrier assigned off-district employees T. Fann, M. Green, P. Powell, C. Summers and M. Curtis to replace ties in the Sherwood House Track at Mile Post 000J96.3 on the W&A Seniority District on the Nashville Division (System File I59710714/2014-178890 CSX).**
- (2) The claim* as presented by Vice Chairman Andrew Shelton on November 18, 2014 shall be allowed as presented because said claim was not denied within sixty (60) days in accordance with Rule 24(a).**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants B. Brown, M. Winton, C. Dyer, J. Edmonds and J. Dawson shall each be compensated eight (8) hours straight time and two (2) hours overtime.**

***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.

After study of the entire record we find the Carrier failed to deny the claim in this case within sixty (60) days and provide the reasons therefore, in accordance with Rule 24 of the June 1, 1999 Agreement. Rule 24 (a) of the Agreement states:

“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 the 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.”

The Organization filed the claim in this case with the Carrier dated November 18, 2014, identifying relevant persons, dates, location, work performed and Agreement provisions applicable to the claim. By letter dated February 13, 2015 the Organization notified the Carrier’s Highest Designated Officer that the Carrier was in default of Rule 24(a) as it had not responded to the Organization’s claim, and it requested that the claim be allowed as presented. We have studied the subsequent record of the handling of this matter on the property and the Carrier’s contention that a Carrier letter dated

November 18, 2014 was a timely denial of the claim and that the Carrier's internal tracking software supported that the denial was timely made under Rule 24(a). We find that there was not proper corroborative evidence in the record before the Board that this letter was timely issued to the Organization. A letter of denial found on the Carrier's internal tracking system does not establish that the response was rendered and sent to the Organization in a timely manner in accordance with Rule 24(a). The Carrier failed to offer any proof that the denial of the claim letter was timely sent to the Organization such as a postmark, e-mail confirmation, fax receipt, hand delivery or other form of proof. Under Rule 24(a) the claim must be allowed.

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.