

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43478
Docket No. MW-44273
19-3-NRAB-00003-170341**

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 March 6, 2015 to Division Engineer J. Peterson shall be allowed as presented because said claim was not disallowed by Division Engineer J. Peterson in accordance with Rule 24(a) (System File G31803615/2015-183938 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 a claim with the Carrier by letter dated March 6, 2015 contending that without properly notifying the General Chairman in advance of its intent to do so, the Carrier assigned 3 outside contractor employees to remove snow and ice in the vicinity of MP CA277.5 near Clinton Forge, Virginia, within the Clinton Forge Seniority District of the C & O Division; and as a result the Claimant were deprived of the opportunity to perform the work including all overtime hours that outside forces expended. By a subsequent letter written on January 26, 2016, but with a typographical error dating it as January 26, 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 March 6, 2015 claim, and requested that the claim be allowed as presented.

Rule 24(a) of the Agreement is controlling in this case. It states:

- “(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.”

Under Rule 24(a) the Carrier had sixty days in which to deny the claim filed with the Carrier on March 6, 2015 and notify the Organization of the denial in writing, or otherwise the claim will be allowed. The Carrier failed to offer any proof that the denial of the claim was timely sent to the Organization – i.e., postmarks, e-mail confirmation, fax receipt, hand delivery or other. The fact that at the April 12 and 13, 2016 claims conference, the Carrier provided a declination letter which was attached to the Carrier's claims tracking system on May 4, 2015 does not mean that the response was rendered and sent to the Organization in a timely manner in accordance with Rule 24(a). Under Rule 24(a) the claim must be allowed.

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 1st day of March 2019.