

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43479  
Docket No. MW-44274  
19-3-NRAB-00003-170342**

**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 December 23, 2014 to Division Engineer J. Fortune shall be allowed as presented because said claim was not disallowed by Division Engineer J. Fortune in accordance with Rule 24(a) (System File I56712114/2015-180565 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 December 23, 2014 on behalf of employees B. Brown and L. Cromer, who are regularly assigned as Machine Operators in the BMW E craft on the Nashville Division alleging the Carrier used outside forces to set a bridge grinder at milepost IHR 3.8 in Henderson, KY, using a five hundred (500) ton crane. The Organization stated this was in violation of the Scope Rule, Rule 1, Rule 4, and the 1981 Agreement as well as unnamed and nonspecific "Memorandum of Agreements." By a subsequent letter written on January 26, 2016 but with a typographical error dating it on 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 December 23, 2014 claim and requested that the claim be allowed as presented.

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

**"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."

Under Rule 24(a) the Carrier has sixty days in which to deny the claim filed with the Carrier on December 23, 2014 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 in this case. 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 claim tracking system on February 21, 2015 does not prove that a response was rendered and sent to the Organization in a timely manner in accordance with Rule 24(a). No postmark, e-mail confirmation, fax receipt, hand delivery or other means of rendering a decision to the Organization appears in the record before the Board. We must sustain this claim.

**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.