

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43480
Docket No. MW-44275
19-3-NRAB-00003-170343**

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 18, 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 I56710814/2014-179152 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.

Employees C. Hodges, J. Whiting, L. DeHart, J. Messamore, and J. Cathey were regularly assigned as Track Department employees in the BMW E craft on the Nashville Division. On November 18, 2014, the Organization filed a claim on behalf of the above named claimants alleging the Carrier used outside forces to pick up brake shoes, tie butts, spikes and tie plates in the South Atkinson Yard at milepost OHC 274.6 in Madisonville, KY. The Organization stated this was in violation of the Scope Rule as well a Rule 1, Rule 4, Rule 17, the 1981 Letter as well as unnamed and nonspecific provisions in MOA 1 and MOA 3. By a subsequent letter written on January 26, 2016, but with a typographical error misdating 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 the Carrier had not responded to the Organization's November 18, 2014 claim, and requested that the claim be allowed as presented.

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."

Under Rule 24(a) the Carrier has sixty days to deny the claim filed with the Carrier on November 18, 2014, and notify the Organization of the denial in writing, or the claim will be allowed. The Carrier failed to offer any proof that the denial of the claim was timely rendered to the Organization in this case. The fact that at the April 12 and 13, 2016 claims conference in Jacksonville the Carrier offered a claim denial document and contended that it has been sent within sixty days of the Organization's November 18, 2014 claim, is not proof that the denial was properly sent to the Organization. A declination letter attached to the Carrier's claim tracking system does not prove compliance with Rule 24(a). We find that no evidence such as a postmark, or other confirmatory means shows that the Carrier complied with Rule 24(a).

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.