

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43615  
Docket No. SG-44599  
19-3-NRAB-00003-180021**

**The Third Division consisted of the regular members and in addition Referee Michael Capone when award was rendered.**

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(National Railroad Passenger Corporation (AMTRAK)**

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp. (Amtrak):**

**Claim on behalf of B.G. Baker, N.A. Benjamin, M.L. Garrick, Jr., W.W. Harman, Jr., R.M. Hart, and M.E. Johnson, for all hours worked by contractors to be divided equally among each Claimant at their respective straight-time and overtime rates of pay, starting on January 22, 2016, continuing until the contractors stop performing Scope covered work, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule and Rule 56, when, starting on January 22, 2016, Carrier permitted contractors to perform the Scope-covered work of installing digital communications components at Amtrak's Police Department National Communications Center (NCC) in Wilmington, Delaware, thereby causing the Claimants a loss of work opportunity. Additionally, Carrier violated the time limits provision of Rule 56 when it failed to respond to the Organization's appeal. Carrier's File No. BRS-SD-1201. General Chairman's File No. AEGC 2016-48-03. BRS File Case No. 15644-NRPC(S).”**

**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.

On March 4, 2016, the Organization filed this claim asserting that the Carrier violated RULE 1 – SCOPE of the parties' Agreement when it permitted outside contractors to perform work reserved to employees holding seniority in the Communication and Signal Department. The Carrier denied the claim on May 6, 2016. On December 14, 2016, the Organization appealed the denial of the claim and further alleged that the Carrier committed a fatal procedural error when it violated paragraph (b) of Rule 56, CLAIMS AND GRIEVANCES. On August 24, 2017, the Carrier issued its final denial of the claim. The Organization filed its notice of intent with the Third Division on September 5, 2017. The claim is now properly before the Board for adjudication.

The following contract language from Rule 56 (b) is relevant to the resolution of this dispute.

**RULE 56 – CLAIMS AND GRIEVANCES**, paragraph (b) in pertinent part, reads as follows:

“When a grievance or claim is not allowed, the Chief Engineer C&S will notify, in writing, whoever appealed the grievance or claim (employee or his representative) within sixty (60) calendar days after the date of appeal or the date the grievance or claim was discussed (whichever is applicable) of the reason therefor. When not so notified, the claim will be allowed as presented.”

The Board first addresses the Organization's claim of procedural error. It alleges that the claim was not filed in accordance with Rule 56(b) and therefore, must be dismissed. The record conclusively establishes that the Organization appealed the

denial of the claim on May 27, 2016, which was received by the Carrier on June 8, 2016. The Carrier did not respond to the appeal until December 5, 2016, which is more than three months past the 60-day period referenced in Rule 56(b).

There is ample arbitral authority to conclude that where the time limit provisions in an agreement clearly requires the dismissal or payment of a claim when it is filed late, the Board must find that a procedural error occurred and find in favor of the party asserting the violation. Based on the clear language of Rule 56(b), mandating that the claim be allowed when the Carrier does not notify the Organization of its decision within 60 days, the Board finds that the procedural error requires we sustain the claim and need not address the merits of the dispute.

**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 17th day of May 2019.**