

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43746  
Docket No. MW-44955  
19-3-NRAB-00003-180434**

**The Third Division consisted of the regular members and in addition Referee Richard K. Hanft when award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division -  
(IBT Rail Conference**

**PARTIES TO DISPUTE: (**

**(Norfolk Southern Railway Company  
(former Norfolk and Western Railway Company)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier delayed the bulletined starting date of DPG Gangs T&S 15 and T&S 33 from January 4, 2016 to February 8, 2016 (Carrier’s File MW-HARR-16-23-SG-252 NWR).**
- (2) The claim\* referenced in Part (1) above and as presented by Vice Chairman H. Vezza under date of February 29, 2016 to Division Engineer J. Young shall be allowed as presented because said claim was not disallowed in accordance with Rule 31(a).**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above; the members of DPG Gangs T&S 15 and T&S 33 shall now each ‘... be compensated all lost wages, benefits, and credits for the claimed dates listed on page 1 of this instant claim of Five weeks or 200 hours per claimant at their respective rate of pay.’”**

**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.

This dispute entails two (2) issues for the Board to determine: one procedural, with the Organization claiming that the claim must be allowed as presented because it was not timely disallowed; and, the second, whether the Agreement was violated when the Carrier delayed the bulletined starting date of DPG Gangs T & S 15 and T & S 33 from January 4, 2016 until February 8, 2016. Both Parties agree that if a procedural violation is found, that the merits of the substantive claim cannot be decided and the Claim must either be allowed as presented or dismissed.

The facts in this matter are undisputed. Carrier has a right under a 1992 Arbitrated Agreement resulting from Presidential Emergency Board 219 to establish regional and system-wide production ("Designated Program Gangs or DPG") gangs including Timber and Surfacing ("T&S") gangs, Rail and Surfacing Gangs to perform large-scale production work across the system.

Such gangs are routinely established, abolished and re-established annually according to Carriers needs and rail and tie renewal schedules. Normally, DPG gangs are bulletined and awarded in November and December in anticipation of work on projects planned for the upcoming year.

In 2015, jobs were bulletined and awarded for positions on T & S Gangs No. 15 and No. 33 with a tentative start date of January 4, 2016. Operational needs caused the start dates on those gangs to be moved back until February 8, 2016. It is undisputed by the Parties that members of those gangs who had been awarded positions thereon were notified of the postponed startup date prior to the 2015 Christmas holiday or by December 23, 2015. Carrier asserts that all members of the gangs were offered alternative fill-in positions or took voluntary furlough until the gangs started up in February. There is no evidence on the record to contradict Carrier's assertion.

The Organization filed a claim on the Claimants' behalf demanding that each member of DPG Gangs T & S 15 and 33 be compensated for all lost wages, benefits and credits for five (5) weeks or 200 hours per Claimant at their respective rates of pay.

In regard to the procedural issue, the claim filed on the Claimant's behalf was undisputedly authored on February 29, 2016, mailed via U.S. Certified Mail on March 1, 2016 and received by the proper Carrier officer on March 4, 2016. Arbitral precedence dictates that Claims are properly "presented" when received by the proper Carrier Officer. See Second Division, Award 12220 (Marx). Sixty (60) days prior to Carrier being "presented" with the Claim was January 5, 2016.

Rule 31 of the M & W – Wabash BMW Agreement, the Parties' current Agreement, provides:

- “(a) All claims or grievances must be presented in writing by or on behalf of the employee involved to the officer of the Carrier authorized to receive same, within sixty days from the date of the occurrence on which the claim or grievance is based. Should any claim or grievance be disallowed, the Carrier shall, within sixty days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for the disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedence or waiver of the contentions of the Carrier as to other similar claims or grievances.”

Hence, to determine the appropriate date of the occurrence upon which the claim or grievance is based the Board must rely on the Parties submissions and arguments therein contained.

The Organization argues that the earliest it could have filed a claim on behalf of the affected employees, and thus, the date of the occurrence on which the claim is based was January 4, 2016. To file a claim before that date, the Organization submits, would be to file a claim on an occurrence that has not yet transpired and would not be "ripe" for complaint.

The Carrier contends, however, that the occurrence complained of transpired no later than December 23, 2015, the latest date that, both Parties agree, all affected employees were informed of the delayed start date of the DPG Gangs.

In Third Division Award 35817, the Board with Referee Benn dealt with a similar issue wherein the Claimant was advised in August 1995 that his name was going to be removed from the Seniority Roster and the Organization waited until February 1996, after the Seniority Rosters were published, to file a claim on the employee's behalf. That Board found that "the time limit for filing a claim begins from the point the employee is advised" of Carrier's intentions.

Here too, the Board determines that the occurrence upon which the claim is based transpired no later than December 23, 2015, the latest date that awarded employees were advised of the postponement and thus, the Claim was not presented to the proper Carrier officer within the time limits imposed by Rule 31. Accordingly, the Claim must be dismissed.

**AWARD**

Claim dismissed.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

Dated at Chicago, Illinois, this 16th day of July 2019.