

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43921
Docket No. MW-45414
19-3-NRAB-00003-190181**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

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

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned junior Foreman P. Lynn to perform track work (changing a frog and guard rails) at CP 161 in Lawton, Michigan on the Michigan Line West on August 10, 2017 instead of calling and assigning senior Foreman J. Teeter thereto (Carrier’s File BMW-619 NRP).**
- (2) The claim* as presented by letter dated October 6, 2017 to Division Engineer Central Division Amtrak T. Mason shall be allowed as presented because said claim was not disallowed by Mr. Mason in accordance with Rule 14.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant J. Teeter shall be compensated eight (8) hours at his applicable overtime rate of pay.**

***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 Claimant established and maintains seniority rights in various classes with the Carrier's Track and Structures Department. At the time of this dispute, he was assigned to a foreman position. On August 10, 2017, the Carrier assigned junior Foreman P. Lynn to perform track work (changing a frog and guard rails) at CP 161 in Lawton, Michigan on the Michigan Line West instead of calling and assigning senior Foreman J. Teeter.

By letter dated October 6, 2017, the Organization filed a claim contending that the Carrier violated the Agreement by assigning the junior employee. In a letter dated October 16, 2017, the Carrier denied the claim. The denial was mailed to an outdated address for the Assistant General Chairman Beal. There is no evidence that Beal received the Carrier's denial. Thus, on December 13, 2017, Beal appealed the claim and notified the Carrier that because it had failed to respond to the grievance within the sixty-day time limit, the claim was in procedural default and must be awarded as presented. On December 22, 2017, the Carrier responded, stating that the Carrier had timely denied the claim but had sent the letter to the wrong address. The Carrier sought to "remand" the claim "back to the first level for handling." The Organization did not object to the remand. Despite this, the Carrier did not respond at the "restarted" first level. As the parties were unable to resolve the dispute on-property, it is properly before this Board for final adjudication.

The Organization contends that this claim must be sustained without reaching its merits because the Carrier defaulted by failing to respond to the representative

who filed it within the time period allowed under Rule 14 of the parties' Agreement. The Organization contends that it provided proper notice of the Assistant General Chairman's new address, so the Carrier had no excuse for failing to properly mail the denial. Furthermore, the Carrier failed to timely disallow the claim after it was purportedly "remanded." Rule 14 states, in part:

"Should any such claim or grievance be disallowed, the supervisor shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or the representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented."

The Organization contends that the Claimant is undisputedly senior to Lynn and is qualified to perform the disputed work.

The Carrier contends that it timely responded to the initial claim, but inadvertently sent its response to the wrong address. The Carrier contends that this simple clerical error should not cause the claim to be paid.

The Carrier contends that the claim is for work which was part of employee Lynn's regular duties and continued only 30 minutes into overtime. The Carrier contends that the work was done as part of a capital project and was performed by the employee's gang at their straight time rate.

As mentioned, the Carrier official denied the claim in a letter but sent the letter to the wrong address, even though two months earlier, the Organization had notified the Carrier of the new address, which appears on the face of the filed claim. The Organization presented evidence that when the Carrier was asked to share the information, its officials replied, "Thanks, David. Noted and will do so."

Because it did not initially receive the Carrier's denial, the Organization appealed and asked that the claim be granted on procedural grounds. The Carrier argues that it made a good faith effort to comply and the Organization was able to reply to the denial. There is precedent that a simple clerical error should not cause a claim to be allowed when a good faith effort to comply is shown. Fourth Division Award 4602. There, however, the board found that the error occurred due to both parties' actions because there was no evidence that the Organization had notified the

Carrier of the General Chairman's new address. The on-property record here shows that both the Carrier's file and the letterhead contained the Assistant General Chairman's new address, but the Carrier official did not send the denial there.

The Organization has demonstrated that the Carrier did not properly deny the claim within the 60-day time limit set forth in Rule 14. Even after the Organization pointed out the failure and the Carrier purported to "remand" the claim, it failed a second time to deny the claim within sixty days of the "new" appeal. The Organization raised the timeliness argument at its earliest opportunity and again at each appeal. When the Carrier's denial fails to comply with the specific requirements set forth in Rule 14, the parties' Agreement mandates that the claim shall be allowed as presented. Third Division Award 39957; Third Division Award 36047.

We therefore find because the Carrier failed to timely deny the claim, the claim must be sustained. This decision is based solely on the procedural violation by the Carrier and expresses no opinion on the merits of the 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 28th day of January 2020.