

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44049
Docket No. MW-44111
20-3-NRAB-00003-170215**

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: (
(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 February 9, 2015 to Mr. M. Ramsey shall be allowed as presented because said claim was not disallowed by Director Labor Relations R. Miller in accordance with Rule 24(b) (System File G37602515/2015-182402 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 Claimant established seniority within the Carrier's Maintenance of Way Department and was regularly assigned as a Vehicle Operator. Beginning on December 15, 2014 and continuing to and including January 7, 2015, the Carrier assigned 6 outside contractors to build a road to access a work site in Paris, Kentucky.

The Organization filed a claim with the Carrier dated February 9, 2015, asserting that the Carrier had violated the parties' Agreement by contracting out work reserved to its members. Specifically, the claim alleges,

"On the following dates, December 15th 2014 up to and including January 7th 2015 the Carrier assigned contractors (Hinkle Construction and LRL Construction) to perform the work of building a road to access a work site at milepost OKC 80.1 in the town of Paris, KY. The contractor's six (6) employees worked a total of forty-eight (48) hours of straight time and twenty-four (24) hours of overtime on each of the claimed dates. This work included the use of a bulldozer, track hoe, dump truck, and various hand tools."

The Carrier denied the claim in a letter dated April 10, 2015, asserting that the disputed work was not Scope-covered. A claims conference was held on October 7, 2015. Thereafter, the Organization requested that the Carrier allow the claim as presented, as the Carrier had not denied the claim after the claims conference, pursuant to Rule 24(b) of the Agreement:

"RULE 24- CLAIMS AND GRIEVANCES

- (b) A claim or grievance denied in accordance with paragraph (a) shall be considered closed unless it is listed for discussion with the carrier's Highest Designated Labor Relations Officer by the employee or his union representative within sixty (60) days after the date it was denied. A claim or grievance meeting with the local committee will be placed on the docket for discussion at such meeting. When a claim or grievance is not allowed, the carrier's Highest Designated Labor Relations Officer will so notify, in writing, whoever listed the claim or grievance (employee or his union representative) within sixty (60) days after the date the claim or grievance was discussed of the reason therefor. When not so notified, the claim will be allowed."

The Carrier opposed the assertion that the claim should be allowed by operation of this rule, asserting that the claim had properly been disallowed by its Highest Designated Officer. The Carrier presented a screenshot of its claim tracking system indicating that a denial was attached to the system on November 24, 2015.

Pursuant to Rule 24(b), the Carrier has sixty days in which to disallow the claim filed and notify the Organization in writing; when the Carrier fails to comply, the claim must be allowed. This provision is unequivocal. When the language of the parties' agreement is clear and unambiguous, this Board need look no further than the negotiated language agreed to by the parties to resolve their dispute.

This Board has previously opined that reference in the Carrier's tracking system "does not prove that a response was rendered and sent to the Organization in a timely manner in accordance with Rule 24..." Third Division Award 43479. The Carrier failed to show by "postmark, e-mail confirmation, fax receipt, hand delivery or other means of rendering a decision" that notification of the disallowance had been given in writing to the Organization in a timely manner. By operation of Rule 24, the claim will be allowed.

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 18th day of June 2020.