

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44321  
Docket No. MW-44918  
21-3-NRAB-00003-180379**

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

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

**PARTIES TO DISPUTE: (**  
**(Connex Railroad LLC**

**STATEMENT OF CLAIM:**

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

- (1) The Carrier violated the Agreement when it refused to convene a Disqualification Hearing for Messrs. I. Duncan and C. Johnson as requested by the Organization in a letter dated December 14, 2015 (System File N77100716 CNX).**
- (2) The claim as presented by Vice Chairman N. Trawick, by letter dated March 2016, to Division Engineer/General Manager N. Blaize shall be allowed as presented because said claim was not properly denied per the requirements of Rule 24(a).**
- (3) The claim as presented by Vice Chairman N. Trawick, by letter dated March 7, 2016, to Division Engineer/General Manager N. Blaize shall be allowed as presented because said claim was not properly denied by the Carrier within sixty (60) days after the August 30, 2016 claims conference per the requirements of Rule 24(b).**
- (4) As a consequence of the violations referred to in Parts (1), (2) or (3) above, the Carrier shall compensate Claimants I. Duncan and C. Johnson one hundred (100) dollars each day beginning January 14, 2016 and continuing until the violation ceases.”**

**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 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.

The Organization contends that the claims should be granted because the Carrier failed to respond to the Claims within the time frame required by the Rule. Further, the subsequent Agreement does not govern the instant matter because the date of filing, not the retroactive date on the Stop Gap Agreement should govern. When the Claims were filed, the prior Agreement was still in effect.

The Carrier counters that the final Agreement, adopted in April 2016, should govern because the final Agreement was retroactive. The Agreement was adopted by the parties and the provisions of the Agreement should apply. In the Final Agreement, unlike the earlier Agreement and the Implementing Agreement, there are no provisions for disqualification hearings. These Claimants were not entitled to disqualification hearings under the new Agreement.

“Upon execution, this Agreement, except to the extent that a specific rule herein references a provision or attachment of the Implementing Agreement, supersedes or replaces in their entirety the Implementing Agreement and the June 1999 CBA and become the final Collective Bargaining Agreement between the Connex and BMW.”

The language of the final collective bargaining agreement is clear. The parties adopted a collective bargaining agreement that replaced their interim agreement. The parties were free to include a provision that would preserve claims that occurred prior to the Final Agreement. Instead, the parties chose to make the provisions of the Final Agreement retroactive and to supersede all but those provisions of The Implementing Agreement that are specifically mentioned. Here, there is no provision cited of the Implementing Agreement that would address the situation at issue in this matter.

The language of the Final Agreement and its retroactive effect is clear. The Organization can cite no provision of the applicable Agreement that applies to the instant matter.

Therefore, the Organization cannot state a claim upon which relief could be granted.

**AWARD**

Claim denied.

**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 6th day of January 2021.