

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45458
Docket No. MW-48327
25-3-NRAB-00003-230577**

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

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

PARTIES TO DISPUTE: (
(Wisconsin Central Ltd.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it instructed employee F. Bandt, who was working the position of Machine Operator A-Boom Truck to perform the duties of flagging a crossing with a 529A and acting as the Employee in Charge, on overtime between Mile Post 213.72 and Mile Post 213.91 on the Fox River Subdivision instead of assigning Mr. T. Buchenauer thereto from April 3 through April 22, 2022 (Carrier’s File WC-BMWED-2022-00022 WCR).**
- (2) The claim*, as presented by General Chairman J. Letizia, by letter dated May 13, 2022, shall now be paid as presented because the Carrier failed to comply with the explicit requirements of Rule 30 of the Agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant T. Buchenauer shall now be compensated for a total of seventy-four and one-half (74.5) hours at the applicable time and one-half rate of pay, at the applicable mobile foreman relief rate of pay for the lost work opportunities on April 3 through April 22, 2022.**

***The initial letter of claim will be reproduced within our 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.

On May 13, 2022, the Organization filed this claim on behalf of the Claimant, Mobile Relief Foreman Todd Buchenauer, asserting that the Carrier violated the Agreement when it improperly instructed another employee to perform flagging duties and acting as an Employee in Charge while on overtime that should have been snow removal duties that should have been offered to the Claimant. The Carrier denied the claim on May 19, 2022. On May 23, 2022, the Organization appealed the denial.

In accordance with Rule 30, CLAIMS AND GRIEVANCES, the parties held a conference on July 27, 2022, to discuss the dispute. Whereas the claim was not resolved during the conference the Carrier denied the appeal on December 20, 2022. On January 26, 2023, the Organization alleged that the Carrier committed a fatal procedural error when it violated paragraph (D) of Rule 30. The Organization filed its notice of intent with the Third Division. The claim is now properly before the Board for adjudication.

The following contract language from Rule 30 is relevant to the dispute.

RULE 30 – CLAIMS AND GRIEVANCES, in pertinent part, reads as follows:

“D. The Committee shall review the entire record of each dispute. A majority of the Committee is required to resolve the dispute. Decisions made pursuant to this process will be made in writing, addressed to the

individual who files the appeal within sixty (60) days of the meeting date, and will represent the final step of claim or grievance handling on the Company's property. The handling of claims or grievances by the Committee will constitute any 'conference' prerequisite for submission of the dispute to any tribunal established pursuant to law or agreement.

* * *

G. Claims not progressed by the Organization within the appropriate time limits shall be barred from further consideration. Claims not answered by the Company within the appropriate time limit shall be paid as presented. Failure to respond to a claim within the appropriate time limit shall not be considered a precedent or waiver of the contentions of the company as to other similar claims or grievances.

* * *

The Board first addresses the Organization's claim of procedural error and finds that it must be sustained. The record establishes that the "Labor/Management Resolution Committee" identified in Rule 30(C) was convened on July 27, 2022, wherein the parties addressed the instant claim. The Carrier issued its written decision denying the claim on December 20, 2022, which exceeded the 60-day period wherein it was required to respond to the Organization as provided for in Rule 30(D).

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 in favor of the party asserting the violation. Where the Board finds a procedural error that requires the claim be sustained, we need not address the merits of the dispute.

The Claimant shall be compensated for all time he was not permitted to perform the flagging duties between April 3 and April 22, 2022 at the applicable rate of pay as provided for in Rule 22 of the Agreement.

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 3rd day of April 2025.