

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45465
Docket No. MW-48334
25-3-NRAB-00003-230584**

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 J. Bayer, who was working the position of mobile machine operator A-Relief operator, to perform the duties of driving the Waukesha Section Truck behind the grinding train, on overtime, between Mile Post 80 and Mile Post 113 on the Waukesha Subdivision instead of assigning Mr. W. Fields thereto on April 1 and 2, 2022 (Carrier’s File WC-BMWED-2022-00017 WCR).**
- (2) The claim*, as presented by General Chairman J. Letizia, by letter dated April 8, 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 W. Fields shall now be compensated for a total of thirteen (13) hours at the applicable time and one-half rate of pay, at the applicable mobile foreman relief rate of pay for the lost work opportunity on April 1 and 2, 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 April 8, 2022, the Organization filed this claim on behalf of the Claimant, Machine Operator Wes Fields, asserting that the Carrier violated the Agreement when it improperly instructed another employee to perform the duties of driving the Waukesha Section Truck behind the grinding train, on overtime, that should have been work performed by the Claimant. The Carrier denied the claim on April 22, 2022. On May 16, 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 27, 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 drive the Waukesha Section Truck on April 1 and 2, 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.