

**PUBLIC LAW BOARD NO. 6301**

**AWARD NO. 7  
CASE NO. 7**

**PARTIES TO  
THE DISPUTE:** Brotherhood of Maintenance of Way Employes  
and  
Kansas City Southern Railway Company  
(former SouthRail Corporation)

**ARBITRATOR:** Gerald E. Wallin

**DECISION:** Claim sustained as presented

**DATE:** January 25, 2001

**STATEMENT OF CLAIM:**

"Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned MidSouth Rail Corporation extra gang employees to repair track on SouthRail Corporation property commencing January 12, 1998 and continuing (Carrier's File MO498 5194 SRL).
2. The claim as presented by Vice Chairman Lawrence A. Triche under date of February 11, 1998 to Division Engineer J. D. Price shall be allowed as presented because said claim was not disallowed by Mr. Price within the sixty (60) day time limit set forth in Rule 34(a).
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, '... the most senior SouthRail Corporation employees equal to those classifications worked by MidSouth employees should be allowed actual hours of pay at the classification worked beginning January 12, 1998, continuing till these violations are corrected. \*\*\*' "

**FINDINGS OF THE BOARD:**

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The facts are not in dispute. This Claim arose when Carrier abolished a former SouthRail extra gang. While the gang was still furloughed, Carrier used a former MidSouth gang to work

on the SouthRail territory to clean up a derailment and repair the track.

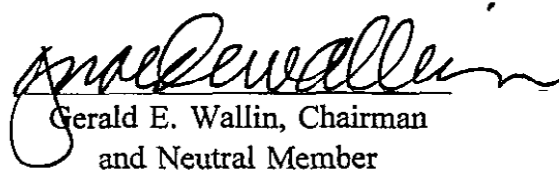
On February 11, 1998, the Organization presented the instant Claim to Carrier's Division Engineer seeking pay on behalf of the most senior SouthRail employees for the work performed by the MidSouth gang. Carrier concedes that the Division Engineer did not respond to the Claim at any time. Nearly seven months later, on September 4, 1998, the Organization appealed the Claim to the Carrier's Engineer of Capital Projects. In addition to reasserting the merits, the Organization contended that the Claim was entitled to a default allowance as presented, per Rule 34(a), because of Carrier's failure to timely disallow the Claim. In its September 24, 1998 reply to the appeal, Carrier did not raise any procedural defenses whatsoever. Specifically, it did not respond in any way to the Organization's rule 34(a) default contention nor did it make any contentions that the Claim was somehow vague or lacking in specifics. Instead, the only justification offered by the Carrier to explain the work assignment was the existence of an alleged emergency situation. In the later stages of the Claim handling on the property, Carrier did raise certain procedural defenses.

On this record, we may not reach any of the issues on the merits or any of Carrier's procedural defenses. Our review of the matter is controlled by the clear and unambiguous language of Rule 34(a). It reads as follows:

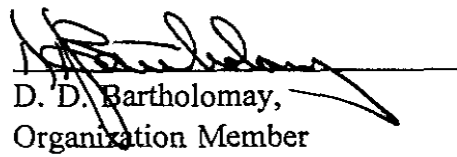
(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the company shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his duly accredited representatives) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the company as to other similar claims or grievances.

Accordingly, the Claim must be allowed as presented. In keeping with Rule 34(a), our decision herein is without prejudice to the merits of the Claim as they may arise in connection with future similar matters.

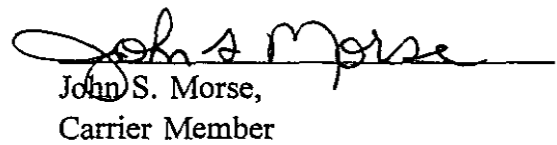
AWARD: The Claim is sustained as presented.



Gerald E. Wallin, Chairman  
and Neutral Member



D. D. Bartholomay,  
Organization Member



John S. Morse,  
Carrier Member