

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7163**

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| Brotherhood of Maintenance of Way |) | |
| Employees Division, IBT |) | |
| |) | |
| vs. |) | Case No. 145 |
| |) | |
| CSX Transportation, Inc. |) | |

Statement of Claim

"Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when, on February 22, 2012, the Carrier assigned B&B Foreman McGuire to install metal sign posts and mile post signs between Mile Posts 00C212 and 236 on the KD seniority district of the Appalachian Division without calling and assigning such work to Claimant S. Lapole (System File G38701612/2012-120002).
2. As a consequence of the violation referred to in Part (1) above, Claimant S. Lapole shall now be compensated for eight (8) hours at his respective straight time rate."

Background

Claimant is a Track Foreman in the Track Department within the KD seniority district on the Appalachian Division and B&B Foreman McGuire holds seniority in the Bridge Department of the Appalachian Division. On February 22, 2012 the Carrier assigned the B&B Foreman to install metal sign posts and mile post signs between Mile Posts 00C212 and 236 on the KD seniority district.

On March 5, 2012 the Organization filed a claim alleging violations of Rule 1 – Seniority Classes, Rule 3 – Selection of Positions, Rule 4 – Seniority, Rule 17 – Preference for Overtime Work and the Memorandum of Agreements (May 23, 2007). BMW states that the installation of sign posts and mile post signs is ordinarily and customarily performed by the Track Department (Claimant) and not by a B&B Foreman (Bridge Department).

On May 1, 2012 the Carrier denied the claim stating the assignment consisted of incidental duties and, as such, any BMW represented employee could perform them. Since the work consumed only thirty (30) minutes the Carrier stated that the Organization's requested remedy was excessive.

On May 9, 2012 the Organization filed an appeal to the claim denial with the Carrier's highest designated officer (HDO) for such matters wherein BMWWE reiterated its position in the claim. On October 23 and 24, 2012 a conference convened but without a satisfactory conclusion to the claim.

On February 5, 2013 the Organization notified the HDO as follows

In accordance to Rule 24(b) of the June 1, 1999, Agreement, the Carrier is outside the sixty (60) day time limit. This claim was denied at the October 24, 2012, claim conference, and the Carrier has not notified me in writing their reason for denying the claim (post conference letter).

The Carrier states that the Organization's procedural allegation is without merit as "[t]he Carrier's denial was well within the 60-day limit required by Rule 24.b." Included with the Carrier's submission to the Board is a post-conference declination letter dated November 8, 2012.

Findings

Public Law Board 7163, upon the whole record and all the evidence, finds that (1) the parties to this dispute are Carrier and Employee within the meaning of the Railway Labor Act as amended, (2) the Board has jurisdiction over this dispute and (3) the parties to this disputes were accorded due notice of the hearing and participated in this proceeding.

As a preliminary and possibly dispositive matter the Board will address Rule 24 – Claims and Grievances. There is no dispute that (1) the Organization filed a timely claim, (2) the Carrier issued a timely response denying the claim, (3) the Organization filed a timely appeal to the claim denial and (4) the parties met in conference on October 23 and 24, 2012 to address the claim but did not reach a satisfactory conclusion.

Following conference with an unresolved claim, the next step under Rule 24 is for the Carrier to issue its written decision. Specifically, Rule 24(b) states as follows:

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.

As stipulated in Rule 24(d), "[w]hen the U.S. Mail is used, the postmark will govern in determining compliance with the various time limits." For example, satisfactory evidence of compliance is the copy of the postmarked envelope of the Organization's appeal to the HDO that is a Carrier exhibit in this record.

The awards in the submissions are instructive for the Board's disposition of this procedural matter. The awards are unanimous in holding that procedural time limits must be adhere to such that, as occurred in Third Division Award 23265, a verbal declination of a claim during conference and a written declination issued after the close of the window for responding do not constitute compliance with the rule's timelines.

In Third Division Award 31208 the matter involved whether the carrier (CSX Transportation) issued a timely response to a claim. The tribunal concluded that "once the individual who filed the claim states the declination was not received, the Carrier must furnish evidence of timely mailing. It did not. The claims grouped in Item 1 of the Statement of Claim were not responded to as provided for in Rule 16(a) of the Agreement."

As occurred in Third Division Award 31208, the Organization notified the Carrier on February 5, 2013 that it had not received the Carrier's written declination within the 60-day window of Rule 24(b). The Carrier's submission includes a post-conference declination letter dated November 8, 2012. There is, however, no corroboration beyond the date on the letter to support a finding that it was timely issued to the Organization within the 60-day window. For example, absent from the record is a copy of a postmarked envelope addressed to the Organization. The postmarked is the agreed-upon benchmark for "determining compliance with the various time limits" in Rule 24(b).

Additionally the Board observes that the Carrier's letter dated November 8, 2012 cites an incorrect Carrier file number and an incorrect Organization file number whereas the Carrier's timely issued claim denial dated May 1, 2012 cites the correct Organization file number. Also, the Organization's letter dated February 5, 2013 reflects the correct file numbers.

The parties stipulated in Rule 24(b) to the result or consequences when there is not "compliance with the various time limits." That is, "[w]hen not so notified, the claim will be allowed." The Board will apply Rule 24 as written and agreed to by the Carrier and Organization. "[T]he claim will be allowed" because the Organization was not notified of the Carrier's written declination within the 60-day window in Rule 24(b).

Award

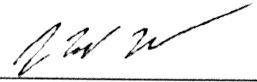
Claim sustained.

Patrick J. Halter /s/

Patrick J. Halter
Neutral Member
Award No. 145



Rob Miller
Carrier Member



Andrew M. Mulford
Organization Member

Dated on this 20th day
of August, 2014