

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7163

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| Brotherhood of Maintenance of Way |) | |
| Employees Division, IBT Rail Conference |) | |
| |) | Case No. 174 |
| and |) | Award No. 174 |
| |) | |
| CSX Transportation, Inc. |) | |

Statement of Claim

"Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned Employees D. Hester, K. Lafontaine, C. Ladnier and C. Eastering to perform overtime bridge service on August 31, 2012 and September 1 and 2, 2012 and failed to assign such work to Claimants C. Burnham, D. Roper, C. Meinhardt and W. Dreadin (System File B11153012/2012-131107 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimants C. Burnham, D. Roper, C. Meinhardt and W. Dreadin shall each now '... be allowed **thirty seven (37) hours overtime** at the respective rate of pay....' (Emphasis in original) (Employee's Exhibit 'A-1')."

Background

On the claimed dates the Carrier assigned employees D. Hester, K. Lafontaine, C. Ladnier and C. Eastering to perform repair work at an entrance to private property located at Mile Post 000787.1 on the MNO&P Seniority District, Atlanta Division. For the claimed work, these employees are junior to Claimants.

On September 12, 2012 the Organization filed a claim under Rule 24 - Claims and Grievances. The Carrier denied the claim. On December 27, 2012, the Organization appealed the claim denial to the Carrier's highest designated labor relations officer (HDO). The instant claim was one (1) of ten (10) claims discussed during conference on April 2 and 3, 2013. By letter dated May 31, 2013, the HDO identified the claims disallowed.

According to the Organization, the HDO did not issue a decision on the Organization's claim appeal "within sixty (60) days after the date the claim or grievance was discussed of the reason therefor" as required by Rule 24(b). When that occurs, Rule 24(b) states "the claim will be allowed."

The Carrier states that the 60-day window in Rule 24(b) opened for the HDO on April 2 and 3, 2013, when this claim and others were discussed at conference. BMW's assertion that the Carrier failed to disallow the claim within 60 days is not based in the Agreement because the HDO disallowed this claim by letter dated May 31, 2013 which falls within the 60-day open window.


Findings

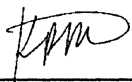
Public Law Board 7163, upon the whole record and all the evidence, finds that (1) the parties to this dispute are Carrier and Employees within the meaning of the Railway Labor Act as amended, (2) the Board has jurisdiction over this dispute and (3) the parties to this dispute were afforded due notice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

Undisputed is that the parties convened in conference on April 2 and 3, 2013 and discussed the instant claim as well as nine (9) other claims. Under Rule 24(b), the HDO was to issue a decision on the instant claim within 60 days of conference. The HDO's declination is dated May 31, 2013 and it identifies 9 claims disallowed. The instant claim is not identified on that list. Given that finding, the Board concludes that the HDO did not issue a timely disallowance to the instant claim. When the Carrier does not meet the window of opportunity in Rule 24(b), the outcome is preordained by the negotiated terms agreed to by the parties - - "the claim will be allowed." Accordingly, the claim is allowed.

Award

Claim allowed in accordance with Rule 24.


Patrick Halter
Neutral Member


Rob Miller
Carrier Member


Andrew M. Mulford
Organization Member

Signed on this 26th day
of January, 2016