

AWARD NO. 220

Case No. 220

Organization File No. G65502313

Carrier File No. 2013-143093

**PUBLIC LAW BOARD NO. 7163**

PARTIES ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,  
TO ) INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
)  
)  
DISPUTE ) CSX TRANSPORTATION, INC.

**STATEMENT OF CLAIM:**

1. The Agreement was violated when, on February 20 and 21, 2013, the Carrier assigned seniority district employees from the Monongah East Seniority District (i.e., Force 5DA6) to perform overtime work of cleaning up a derailment and laying track panels on the Mountain Sub. Seniority District, C&O Service Lane, C&O Division.
2. The appeal as presented by Vice Chairman D. Lopez on September 26, 2013 to Highest Designated Officer (HDO) R. Paszta shall be allowed as presented because said appeal was not disallowed in accordance with Rule 24(b).
3. As a consequence of the violations referred to in Parts 1 or 2 above, Claimants G. Wheeler, M. Sponaugle, G. Snyder, C. Kauffman, E. Long and T. Knippenburg shall be compensated for "... all straight time and overtime hours worked by the improper employees at their respective rate of pay.

**FINDINGS:**

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

The Organization has filed this claim alleging that the Carrier improperly used members of Force 5DA6 from the Monongah East Seniority District to perform overtime work of cleaning up after a derailment and laying track panels on the Mountain Sub. Seniority District in lieu of assigning the work to local section forces on the applicable seniority district.

As a threshold issue, the Organization argues the Carrier's Highest Designated Officer (HDO) did not issue a denial of the claim in a timely manner. It says it appealed the first level denial to the HDO by letter dated September 26, 2013, and the claim was discussed in conference on February 19 and 20, 2014. On October 15, 2014, says the Organization, it wrote to the HDO, advising that the claim had not yet been denied. The Carrier responds that HDO R. A. Paszta issued a denial of the claim on April 11, 2014, within the sixty-day time limit. Its submission before this Board contains a copy of that letter.

Rule 24, governing the handling of claims and grievances, sets forth the applicable time limit for the HDO to deny a claim. Section (b) of that Rule states:

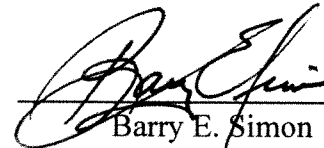
A claim or grievance denied in accordance with paragraph (a) shall be considered closed unless it is listed for discussion with the carrier's Highest Designated Labor Relations Officer by the employee or his union representative within sixty (60) days after the date it was denied. A claim or grievance meeting with the local committee will be placed on the docket for discussion at such meeting. 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 therefore. When not so notified, the claim will be allowed.


The record reflects that the Carrier did not respond to the Organization's October 15, 2014 letter. The Organization, by letter dated November 13, 2014, notified the National Mediation Board that this case would be submitted to this Board. We find, therefore, that the Carrier had not proffered a copy of the April 14, 2014 letter to the Organization prior to the case being docketed to the Board.


Accordingly, it is not properly in the record before us, and we must consider the Organization's assertion that no denial was issued as unanswered by the Carrier. Therefore, we find that the time limit was violated by the Carrier and the claim must be sustained without regard to the merits.

We note there was a potential for the Organization to raise the time limit objection and then docket the case without giving the Carrier an opportunity to respond. We would not sanction such a "gotcha" tactic. In this case, though, the Carrier had nearly a month to respond, and when the case was docketed, it raised no objection to any lack of time to present its copy of the denial letter.

AWARD: Claim sustained. Carrier is directed to comply with this Award within 45 days.

  
Barry E. Simon  
Chairman and Neutral Member

  
Andrew Mulford  
Employee Member

  
Rob Miller  
Carrier Member

Dated: 10/19/16  
Arlington Heights, Illinois