

Public Law Board 7163

Award No. 242

Parties to Dispute:

**Brotherhood of Maintenance of Way Employees Division
IBT Rail Conference**

And

CSX Transportation, Inc.

Statement of Claim:

"Claim of the System Committee of the Brotherhood that:

- 1. The claim as presented by Vice Chairman David Lopez on June 10, 2013 to Division Engineer R. Daniels must be allowed as presented because said claim was not disallowed by Director Labor Relations R. Paszta in accordance with Rule 24(b) (System File A04503613/2013-146919 CSX).*
- 2. As a consequence of the violation referred to in Part 1 above, Claimant M. Peterson must be allowed two hundred twelve (212) hours' pay at his respective double time rate of pay and forty eight (48) hours at his respective overtime rate of pay."*

Findings:

The Organization filed a claim on behalf of Maintenance of Way Employee M. Peterson. Mr. Peterson holds seniority in the B&B Sub-department on the Baltimore Service Lane Seniority District, Baltimore Division. The claim alleged that Carrier violated CBA rules 1, 3, 4, 11, 17, and MOA effective June 1, 1999, when it allowed a Track Department and junior employee R. E. Werner to work flagging position for an outside party installing tunnel liners on the Baltimore Service Lane, Baltimore Division.

Claim was appealed and denied up to Carrier's Highest Designated Officer (HDO) of appeal. Carrier's HDO and the Organization agreed to discuss this dispute in conference. Conference was convened, and Organization agreed to extend Carrier's response time until May 9, 2014. On May 9, 2014, Carrier's HDO issued what the Organization characterized as a non-responsive denial letter in which the Carrier offered no rationale for its denial. The Organization argued such a letter fell, woefully, short of satisfying the standards for a denial letter as outlined in Rule 24 (b).

Rule 24 (b) reads in pertinent part:

"...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."

The Organization pointed out that the dispute at issue was conference and last discussed on February 18, 2014, but by mutual agreement, the response time was extended to May 9, 2014. On May 9, 2014, Organization received a letter addressing seven (7) separate and discrete disputes that varied widely, with respect to issues, facts, and arguments. Carrier's advice stated, simply, that all disputes remained denied. The letter offered no substantive rationale for their denial – either separately or collectively.

Carrier maintained there was no requirement to provide rationale for declining Claimant M. Peterson's claim beyond what was already given. From Carrier's point of view, it had already advised the Organization of the reasons for the original declination: 1) The Organization offered assertions, only, with no proof, in its original claim, and it failed to overcome its burden of proof; 2) the reasons for denial were stated in the HDO's denial, and by reference, were incorporated, therein; 3) and the Organization had offered no additional facts or evidence to persuade the Carrier it should reverse its original decision.


This Board has read all the evidence, heard the oral presentations, and given due consideration to the positions staked out by both parties. We agree with the Organization, and the precedential Award # 206 of PLB 7163 on this property involving the same issue and fact base as the dispute, now, before us. The issue in the instant dispute is whether the Carrier violated Rule 24(b) – with respect to claim presented by Vice Chairman David Lopez on June 10, 2013 to Division Engineer R. Daniels – when it failed to properly deny the claim and to state the reasons, therefor; and if so, what shall be the remedy. The Board referenced Rule 24 (b), earlier, but will, now, emphasize.

In clear and unambiguous language, Rule 24 (b) states in pertinent part:

"...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."


Award:

Claim is sustained as presented by Vice Chairman David Lopez on June 10, 2013.



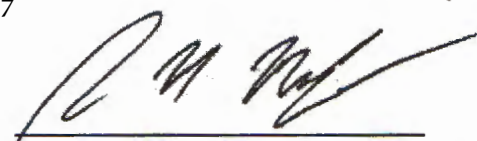
J. E. (Jim) Nash, Arbitrator, Inc.
Chairman and Neutral Member

Dated: December 23, 2017



Katrina Donovan
CSX Transportation, Inc.

Carrier Member



Andrew M. Mulford
BMW

Organization Member