

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 7163

Brotherhood of Maintenance of Way	)	
	)	
Employees Division, IBT Rail Conference	)	Case No. 321
	)	Award No. 321
and	)	
	)	
CSX Transportation, Inc.	)	

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The claim as presented shall be allowed as presented because said claim was not disallowed by the Carrier’s Highest Designated Officer (HDO) within sixty (60) days after the claim was discussed per Rule 24(b) (System File G34374514/2014-168671 CSX).

2. As a consequence of the violation referred to in Part 1 above,

Claimant S. Stamper shall be compensated ‘...33 hours, at time and one half, at Assistant Foreman Flagman rate of pay \$27.30. This is for the work performed by the employee who was called which resulted in loss of work opportunity. We also request that these days be credited towards

vacation, retirement, and guarantee purposes.’ (Employees Exhibit ‘A-1’).”

### FINDINGS:

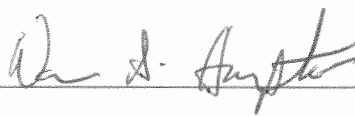
The Organization alleges that the Carrier has failed to deny the claim as presented within sixty (60) days as required by the Controlling Agreement. The Organization alleges that the Carrier’s HDO failed to deny the appeal within sixty (60) days as specifically mandated by Rule 24(b). The Rule further requires in pertinent part “...then the remedy will be allowed as presented with regard to the merits...” The Rule is clear and unambiguous, and the claim should be sustained in its entirety.

The Carrier responds initially that the claim should be denied because the claim was properly disallowed in accordance with Rule 24(b). The Organization failed to show the Carrier violated any rules or agreements, and the Organization failed to fulfill its burden of proof. The claim was denied by the Highest Designated Officer on February 13, 2015 and mailed under the Carrier’s customary handling of claims on February 13, 2015. The Organization has not met its burden of proof and the claim should be denied.

The Board has carefully reviewed the record before us, including the precedents the parties have submitted to bolster their arguments. This case has many similarities to our Awards #290 and #291. The Carrier's failure to respond to the Organization's letter of July 21, 2015 during the handling on the property is fatal to their case. The claim will be sustained based on procedural issues and does not address the merits of the initial claim that was filed.

AWARD:

Case sustained in accordance with the findings.



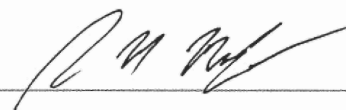
Don A. Hampton

Neutral Chairman and Referee



Katrina Donovan

Carrier Member



Andrew M. Mulford

Employee Member

DATED: July 13, 2018