

PUBLIC LAW BOARD NO. 6334

Award No. 1
Case No. 1

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and
The Texas Mexican Railway Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The claim* as presented by First Vice Chairman and Secretary-Treasurer R. D. Sanchez on July 29, 1996 to General Manager and Vice President R. J. Spear shall be allowed as presented because said claim was not disallowed by General Manager and Vice President Spear in accordance with Rule 18(a) (System File MW-97-1-TM).
2. The claim* as presented by First Vice Chairman and Secretary-Treasurer R. D. Sanchez on August 7, 1996 to General Manager and Vice President R. J. Spear shall be allowed as presented because said claim was not disallowed by General Manager and Vice President Spear in accordance with Rule 18(a) (System File **MW-97-2-TM**).
3. The claim* as presented by First Vice Chairman and Secretary-Treasurer R. D. Sanchez on August 7, 1996 to General Manager and Vice President R. J. Spear shall be allowed as presented because said claim was not disallowed by General Manager and Vice President Spear in accordance with Rule 18(a) (System File **MW-97-3-TM**).

*The initial letters of claim will be reproduced within our initial submission.

FINDINGS:

This Board, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended; and
2. That the Board has jurisdiction over this dispute.

OPINION OF THE BOARD:

Rule 18(a) provides:

TIME LIMITS FOR PRESENTING AND PROGRESSING
CLAIMS OR GRIEVANCES

(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the Vice President - Operations within sixty (60) days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier, shall within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

In a letter dated July 29, 1996, the Organization filed Claim 1 on behalf of certain named employees:

for one hundred sixty three (163) hours each at their respective overtime rate of pay or for an equal portion share of total man hours worked account the Carrier used contractor forces to perform Maintenance of Way duties in the vicinity of Laredo, Texas on the carrier's property on June 1 through and including June 16, 1996.

The record indicates that the disputed work occurred on the International Bridge. In Cause No. C-95-00809-D2, dated April 4, 1996, the District Court for the 11th Judicial District in Webb County, Texas issued a Final Judgment that found:

Mexrail has established by undisputed evidence as a matter of law that it is the

owner of and has full legal title to that portion of the International Railroad Bridge (between Laredo, Texas and Neuvo Laredo, Tamaulipas, Mexico) that is in the United States.

On the basis of this formal judicial finding, the Carrier did not own the location where the disputed work occurred. Under these circumstances in this particular case, Claim 1 is denied.

In a letter dated August 7, 1996, the Organization filed Claim 2 on behalf of certain named employees:

for one hundred fifty two (152) hours each at their respective straight time rate of pay and for one hundred fifty seven (157) hours each at their respective overtime rate of pay or for an equal portion share of total man hours worked account the Carrier used contractor forces to perform Maintenance of Way duties in the vicinity of m.p. 9.6 and m.p. 29.7 on the carrier's property on June 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 24, 26, 27, 28, 29, 30, July 1, 2, 3, 11, 12, and 13, 1996.

The record indicates that the Carrier failed to respond to Claim 2. In accordance with Rule 18(a), the Carrier failed to submit a timely response. Under these circumstances Claim 2 shall be sustained.

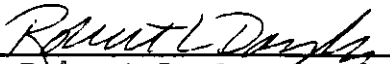
In a letter dated August 7, 1996, the Organization filed Claim 3 on behalf of certain named employees:

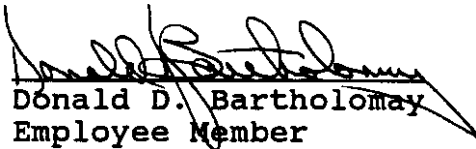
for one hundred forty four (144) hours each at their respective straight time rate of pay and **for** eighty six and one half (86½) hours each at their respective overtime rate of pay or for an equal portion share of total man hours worked account the Carrier used contractor forces to perform Maintenance of Way duties in the vicinity of m.p. 9.6 and m.p. 29.7 on the carrier's property on June 24, 25, 26, 27, 28, July 1, 2, 3, 8, 9, 10, 11, 12, 14, 15, 17, 18 and 30, 1996 and on a continuing basis.

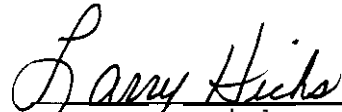
The record indicates that the Carrier failed to respond to Claim 3. In accordance with Rule 18(a), the Carrier failed to submit a timely response. Under these circumstances Claim 3 shall be sustained.

AWARD

Claim 1 is denied. Claim 2 and Claim 3 are sustained in accordance with the Opinion of the Board. The Carrier shall make the Award effective on or before 30 days following the date of this Award.


Robert L. Douglas
Chairman and Neutral Member


Donald D. Bartholomay
Employee Member


Larry L. Hicks
Carrier Member

Dated: 4-2-01