

BEFORE PUBLIC LAW BOARD NO. 6043

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION
IBT RAIL CONFERENCE
and
ILLINOIS CENTRAL RAILROAD COMPANY**

Case No. 345

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it required Surfacing Gang ICDEX07 employees A. Hoh, D. Plummer and B. Stokes to report to an assembly point other than their assigned gang’s assembly point beginning on October 17, 2011 and continuing through November 21, 2011 (System File C111216/IC-BMWED-2011-00170 ICE).
2. As a consequence of the violation referred to in Part (1) above, Claimants A. Hoh, D. Plummer and B. Stokes must ‘. . . be allowed their respective overtime rate of \$37.67 per hour for all hours worked per day and travel time which comes to \$7534.00 for Claimant Hoh, \$1205.44 for Claimant Plummer and \$2862.92 for Claimant Stokes for having to report to an alternate assembly point in violation of the Current Working Agreement time. Claimant(s) would also be entitled to mileage between assembly points that amounts to \$6063.75 for Claimant Hoh, \$937.75 for Claimant Plummer and \$3870.00 for Claimant Stokes’.”

FINDINGS:

The Organization filed a claim on behalf of the Claimants, alleging that the Carrier violated the Agreement by requiring them to report to an assembly point other than their assigned gang’s assembly point during the period from October 17 through November 21, 2011. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Carrier violated Rule 34 of the Agreement when it failed to provide reasons for disallowing the Organization’s claim and thereby rendering the Organization’s claim unchallenged before this Board, because the evidence established that the Carrier violated

the Agreement by requiring Claimants to report to an assembly point other than their designated assembly point, because the Carrier failed to comply with the August 2013 global settlement in connection with this case, and because the requested remedy is appropriate. The Carrier contends that the instant claim should be denied in its entirety because the Organization has failed to meet its burden of proof, because the Carrier applied the rules as written, and because there is no basis for any monetary compensation to the Claimants.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the Organization is correct that the Carrier failed to properly respond to the claim of the Organization within sixty days. Said failure violated Rule 34.

Rule 34(a) states the following:

All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the carrier authorized to receive same, 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 company shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or the employee's duly accredited 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 company as to other similar claims or grievances.

The record in this case is clear that the Organization filed the claim on behalf of the three Claimants, Hoh, Plummer, and Stokes, on December 15, 2011. The claim stated that the three Claimants were split off from their regular gang and, therefore, would be

entitled to benefits under Rules 14(a), 22(b), and 36(c). The Carrier filed its response on February 3, 2012, and merely restated the claim. The only response that it made was the following:

In connection with the Organization's allegation, Foreman Jackson moved the Cat Tamper, and Regulator north, while claimants Hoh, Plummer, and Stokes were kept on their respective machines, a Mark IV Tamper, Stabilizer, and Regulator. The three (3) claimants continued to work on an out of face surfacing project, and remained there until the out of face surfacing project was completed.

In the next paragraph, the Senior Manager of Engineering stated:

With these facts, the Organization's claim is without merit and is declined in its entirety.

That February 3, 2012, letter from C. N. Yeroschak cannot be viewed as any real denial of the claim because there are really no reasons given for the disallowance of the claim as required by Rule 34.

Rule 34 requires that if the Organization is not so notified of the reasons for the disallowance, "the claim or grievance shall be allowed as presented . . ."


Given the record in this case and the failure of the Carrier to state in writing the reasons for the disallowance of the claim, this Board has no choice other than to sustain the claim.

AWARD:

The claim is sustained.




PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: July 24, 2018



CARRIER MEMBER

DATED: July 24, 2018