

PUBLIC LAW BOARD NO. 7599

**AWARD NO. 19
CASE NO. 19**

**PARTIES TO
THE DISPUTE:** Brotherhood of Maintenance of Way Employees Division
IBT Rail Conference

vs.

Grand Trunk Western Railroad Company

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- 1. The Agreement was violated when the Carrier assigned employees L. Kreps, D. Mahmat, E. Arrendondo and R. Trimm to work with a production gang on September 3, 4 and 5, 2013 but failed and refused to pay them per diem (Carrier's File GTW-BMWED-2013-00016 GTW).**
- 2. The claim referenced in Part 1 above shall further be allowed because the Carrier defaulted on the claim when it failed to hold a timely appeal meeting as required by Rule 24(b).**
- 3. As a consequence of the violations referenced in Parts 1 and/or 2 above, Claimant L. Kreps shall be compensated per diem pay of sixty-five dollars (\$65.00) for September 3, 2015 and Claimants D. Mahmat, E. Arrendondo and R. Trimm shall each be compensated per diem pay of sixty-five dollars (\$65.00) per day for September 3, 4 and 5, 2013."**

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The default claim alleged in the second paragraph of the Statement of Claim in this matter is similar to Case Nos. 16 and 17.

The Organization and the four claimants who were denied the per diem allowance for either 1 or 3 days in September of 2013 contend they are entitled to a sustaining decision by virtue of the Carrier's default. The Carrier's initial denial of the claim was made by letter dated

October 11, 2013. The Organization appealed by letter dated November 26, 2013. The Carrier issued another denial by letter dated December 30, 2013. The record does not establish that a grievance appeal meeting was conducted before the Carrier issued that denial. By letter dated January 30, 2014, the Organization claimed the default entitlement because no grievance appeal meeting was held. That ended the on-property record. The Carrier neither refuted nor responded to the Organization's default claim. The record does not establish that a meeting was ever held.

Agreement rule 24 governs the procedure to be followed during the handling of the claim on the property. It reads, in pertinent part, as follows:

RULE 24 - CLAIMS AND GRIEVANCES

* * *

(b) A claim or grievance denied in accordance with paragraph (a) shall be considered closed unless it is appealed in writing to the designated officer of the company by the employee or his union representative within sixty (60) days from receipt of notice of disallowance. A claim or grievance appeal meeting with the employee, duly accredited representative, and or local committee *will be held* within sixty (60) days of the carrier's receipt of such notice of appeal. When a claim or grievance is not allowed, Labor Relations 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. Claims paid by default are not to be considered a precedent or waiver of the contentions of the employees and will not be referred to in other similar claims.

(Italics supplied)

As written, an appeal meeting must be conducted. Per the mandatory wording of the rule, the parties have provided that an appeal meeting is a condition precedent to the issuance of a denial of the claim; the meeting must be held before the denial is issued. This mandatory requirement for a grievance appeal meeting is entirely consistent with the provisions of the Railway Labor Act (RLA)¹. RLA §§ 152 First and Sixth impose a duty upon carriers and organizations to exert every reasonable effort to settle all disputes by requiring the parties to engage in a conference as part of their handling of a claim on the property. RLA § 153 First (i) requires that claims be "... handled in the usual manner ..." on the property as a prerequisite to

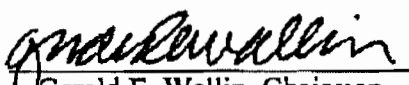
¹ 45 USC §§ 151-188

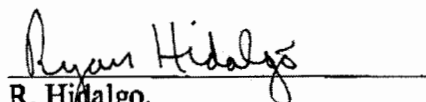
jurisdiction being conferred upon an adjustment board to consider its merits.


Given the circumstances of this record, the finding is that the instant claim must be sustained by default with the proviso, per the final sentence of Rule 24(b), that it does not set a precedent and may not be referred to in other similar matters.

AWARD:

The Claim is sustained.


Gerald E. Wallin, Chairman
and Neutral Member


R. Hidalgo,
Organization Member


C. K. Cortez,
Carrier Member

Date: 11/4/2016