

PUBLIC LAW BOARD NO. 7599

**AWARD NO. 24
CASE NO. 24**

**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 failed and refused to allow Mr. J. King to exercise his welder helper seniority to displace junior Welder Helper E. Knill at Pontiac, Michigan on January 3, 2012 and continuing (Carrier's File GTW-BMWED-2012-00005).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. King shall now ... be paid for all straight time and overtime hours worked by Welder Helper Knill beginning on January 3, 2012 continuing until such time as Claimant King allowed to displace onto to (sic) the Welder Helper position at Pontiac, MI.”

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.

This claim was originally appealed to the Third Division where it remained until it was withdrawn for hearing before this Board. The record of handling on the property does not establish any jurisdictional problems that require intervention by us.

The Carrier's submission contains a significant amount of factual information and argument that was not part of the record developed by the parties during their handling of the claim on the property. It is well settled that new information and/or argument may not be considered at all if it is raised for the first time before this Board (or the Third Division). Thus, we must ignore the new information and argument contained in the Carrier's submission and confine our review to the information and argument that was contained in the four (4) letters that comprise the on-property record.


As noted in the previous Statement of Claim, Claimant was not allowed to exercise his Welder Helper seniority against a more junior employee beginning January 3, 2012. The claim alleges the Carrier chose not to allow Claimant to so displace. The claim also cited Rules 1, 3, and 4 in support of its position. Rule 3 provides that seniority shall govern in the assignment of employees to positions if sufficiently qualified. Rule 4 provides for the exercise of seniority and establishes the time limit for doing so.

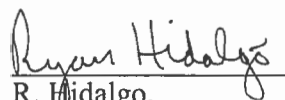
The record establishes that Claimant complied with Rule 4 but was not allowed to displace the junior employee at Pontiac. On the property, the Carrier never denied that it failed to allow the displacement. It is equally well settled that assertions of material fact that are not refuted in the record become established as fact without further proof. Then, oddly enough, the Carrier did allow Claimant to displace the very same junior Welder Helper on the very same position at Pontiac, Michigan on February 24, 2012. Thus, the period of the claim is from January 3, 2012 to February 24, 2012.

It matters not that Claimant may have been able to work elsewhere off his home district for some part of the claim period. The Agreement did not require him to do so. He was entitled to be working on the Welder Helper position at Pontiac throughout. Therefore, we sustain the claim and direct the Carrier to make claimant whole for all losses, both straight time and overtime hours, if any, he suffered during the claim period. The Carrier may offset hours worked elsewhere during the claim period. If the Pontiac position worked more straight time or overtime hours during the time claimant was working elsewhere, Claimant is entitled to be compensated for the difference.

AWARD:

The Claim is sustained. The Carrier is directed to comply with this Award within thirty (30) days of the date hereof.


Gerald E. Wallin, Chairman
and Neutral Member


R. Hidalgo,
Organization Member


C. K. Cortez,
Carrier Member

Date: 2-8-2018