**PUBLIC LAW BOARD NO. 7599**

AWARD NO. 38

CASE NO. 38

PARTIES TO
THE DISPUTE: Brotherhood of Maintenance of Way Employes 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 dismissal of Mr. C. Curtis for violation of USOR - General Rule D - Reporting Injuries and Defects and USOR - General Rule H - Furnishing Information and Conduct in connection with whether or not Claimant failed to timely report an injury and/or falsified an injury report was arbitrary, capricious, unwarranted and in violation of the Agreement (Carrier's File GTW-BMWED-2014-00015 GTW).

2. The claim, as appealed under letter dated June 30, 2014, shall be allowed as presented because the Carrier defaulted on the claim when it failed to hold an appeal conference prior to issuing its decision to uphold the dismissal as required by Rule 25(c).

3. As a consequence of the violations referred to in Parts 1 and/or 2 above, Claimant C. Curtis shall be granted the remedy in accordance with Rule 25 of the Agreement."

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.

As noted in Paragraph 2 of the Statement of Claim, the Organization and claimant contend they are entitled to a sustaining decision by virtue of the Carrier's default resulting from the Carrier's failure to conduct an appeal conference on the property per Rule 25, which governs

Discipline, Investigations and Appeals. After the investigation conducted on May 20, 2014, the Carrier's dismissal decision was made by letter dated June 5, 2014.

The Organization appealed by letter dated June 30, 2014. The final sentence of the first paragraph of the appeal letter reads as follows:

> "This Appeal shall activate a request for Appeal Conference as provided for in Rule 25 of our current Working Agreement dated June 16, 2008."

The Carrier issued a denial by letter dated July 21, 2014. According to the Carrier's submission, this letter was the final piece of correspondence exchanged between the parties on the property prior to advancing the dispute to Public Law Board No. 7599.

The Organization's submission, however, does show additional correspondence. By letter dated September 15, 2014, the Organization wrote, in pertinent part, the following:

* * *

> "On August 4, 2014 an appeal conference was held regarding the above mentioned claim. While on August 4, 2014 the carrier was already in default of the appeal, a conference was held nonetheless in adherence to our Agreement. To date, the carrier has further defaulted in the appeal process by failing to advise the employee and the Organization, in writing, of the carrier's decision, resulting from the conference.
>
> Having defaulted on the claim not once but twice, the claim must now be allowed, awarded and paid by default. * * *"

* * *

The Carrier neither refuted nor responded to the Organization's default contentions expressed in its September 15, 2014 letter.

Despite the presence of the Organization's default letter, the Carrier's submission lists as its Exhibit D the following:

POST CONFERENCE LETTER – JULY 21, 2014.

However, careful review of the letter reveals that it makes no reference whatsoever to an appeal conference having been held before the denial was issued. If, indeed, a conference was held on the property, it is customary for a carrier to document in writing the date and the fact of the conference. Such factual documentation in the record is necessary to confer jurisdiction to Public Law Board No. 7599 for disposition. If not so documented, such disputes are typically dismissed for lack of jurisdiction because the record will not have shown that the dispute had been handled in the usual manner on the property.

After applying well-settled principles of analysis to the on-property record, we are compelled to find that an appeal conference required by Rule 25 was not conducted before the Carrier issued its denial on July 21, 2014.

Agreement Rule 25, Section 3 governs the procedure to be followed for the appeal of a disciplinary claim on the property. It reads, in pertinent part, as follows:

**RULE 25 – DISCIPLINE, INVESTIGATIONS AND APPEALS**

* * *

(a) Appeal from discipline must be made, in writing, by the employee or on his behalf by his union representative to the Director, Labor Relations or designate within thirty (30) days after receipt of written notice of discipline. * * *

(b) At the appeal conference, an employee may attend or be represented by the duly accredited representative.

(c) *After the appeal conference*, the employee and his union representative shall be advised not later than thirty (30) days *after the conference* in writing, of the decision. * * *

* * *

(e) The time limits of this Rule may be extended by written agreement between the Company and the employee or his union representative. In the event the time limits are not complied with, discipline or right of appeal shall be barred as the case may be. When the U.S. Mail is used, the postmark will govern in determining compliance with the various time limits.

* * *

*(Italics in subparagraph (c) above supplied)*

As written, Rule 25 requires an appeal conference to be conducted as part of the usual manner of handling disciplinary claims on the property. Per the mandatory wording of the rule, the parties have provided that an appeal conference is a condition precedent to the issuance of a denial of the claim; the conference must be held before a denial is issued. This mandatory requirement for an appeal conference parallels the same procedure required by Rule 24 for the handling of rules-based claims on the property.[1] Moreover, the requirement is entirely consistent with the provisions of the Railway Labor Act (RLA)[2]. 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 §

[1] See, for examples, prior Awards 4, 10, 16 and 19 of this Board.

[2] 45 USC §§ 151-188

153 First (i) requires that claims be "... handled in the usual manner ..." on the property as a prerequisite to jurisdiction being conferred upon an adjustment board to consider its merits.

Given the circumstances of this record, the Carrier's default requires us to find that the imposition of discipline on claimant is barred. Accordingly, the claim must be sustained as presented.

AWARD:

The Claim is sustained.

Gerald E. Wallin, Chairman
and Neutral Member

R. Hidalgo,
Organization Member

C. K. Cortez,
Carrier Member

Date: 12-7-2017