

**PUBLIC LAW BOARD NO. 7599**

**AWARD NO.4**

**CASE NO. 4**

**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 claim, as appealed under letter dated February 20, 2013, shall be allowed as presented because the Carrier defaulted on the claim when it failed to hold a timely appeal meeting as required by Rule 24(b).
2. The claim, as appealed under date of February 20, 2013, to Director Labor Relations T. Rice, shall be allowed as presented because it was not timely disallowed in accordance with Rule 24(b).”

**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 rules case involved two claimants seeking payment of a 50-minute arbitrary allowance. According to the record, they held bid positions as carpenters in the Bridge and Structures Department. They claim they were used as Class 2 machine operators for several days for a track gang. As such, they claim entitlement to the arbitrary allowance for each day they were used. Because of the handling of the claim on the property, the Organization asserts it is entitled to a sustaining Award due to the Carrier’s procedural default.

The claim was filed by letter dated October 29, 2012 from the Organization’s Assistant General Chairman (“AGC”). By letter dated December 19, 2012 back to the AGC, the Carrier denied the claim explaining, among other contentions, that only employees assigned to the Track Department were entitled to receive the arbitrary.

The record of handling on the property does not establish that a grievance appeal meeting was ever conducted by the parties.

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 a denial is issued. This mandatory requirement for a grievance appeal meeting is entirely consistent with the provisions of the Railway Labor Act (RLA)<sup>1</sup>. 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 jurisdiction being conferred upon an adjustment board to consider its merits.

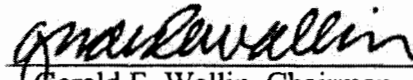
Given the circumstances of this record, the finding is that the instant claim must be sustained by default with the proviso, per the final sentence of Rule 24(b), that it does not set a precedent and may not be referred to in other similar matters.

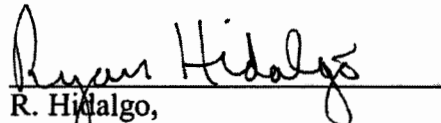
---

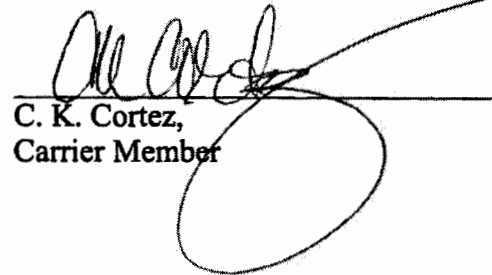
<sup>1</sup> 45 USC §§ 151-188

AWARD:

The Claim is sustained.

  
Gerald E. Wallin, Chairman  
and Neutral Member

  
R. Hidalgo,  
Organization Member

  
C. K. Cortez,  
Carrier Member

Date: Dec 2, 2014