

PUBLIC LAW BOARD NO. 6334

Award No. 2
Case No. 2

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and
The Texas Mexican Railway Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned outside forces (Trac Work, Inc.) to build and install road crossing panels between Mile Posts 2 and 2.90 in the vicinity of Laredo, Texas on September 8 through November 5, 1997 (System File MW-98-1-TM).

(2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper notice of its intent to contract out the work in question and failed to exert a good-faith effort to increase the use of Maintenance of Way forces and reduce the incidence of employing outside forces pursuant to Rule 29 and the December 11, 1981 Letter of Agreement.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Foreman E. Lara, Machine Operators J. Lopez, R. Escobedo, Laborers J. Sciaraffa, E. Elizalde, R. Couling, N. Saenz, Welder C. R. Tijerina, and Welder Helper A. T. Jiminez shall each be allowed three hundred twenty (320) hours' pay at their respective straight time rates and one hundred ninety (190) hours' pay at their respective time and one-half rates.

FINDINGS:

This Board, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended; and
2. That the Board has jurisdiction over this dispute.

OPINION OF THE BOARD:

Rule 18(a) provides:

TIME LIMITS FOR PRESENTING AND PROGRESSING
CLAIMS OR GRIEVANCES

(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the Vice President - Operations 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 Carrier, shall within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his 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 Carrier as to other similar claims or grievances.

Rule 18(a) prescribes specific requirements to initiate a claim or a grievance. The requirements agreed to by the parties set forth the designated official of the Carrier to whom the Organization must submit a claim or a grievance. The designated official is the Vice President - Operations. Rule 18(a) also contains the time limit of 60 days from the date of the occurrence for the Organization to file the claim or the grievance.

A careful review of the record indicates that in the present dispute the Organization failed to follow the proper procedure for filing the referenced claims. In particular, the Organization failed to present the claim to the Vice President - Operations within the required sixty days. The Public Law Board lacks the authority to alter, amend, change, modify, or vary the terms of Rule 18(a) without any evidence that the parties had decided to do so. The record lacks such evidence.

As a result, the record proves that the Organization did not

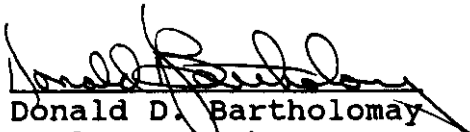
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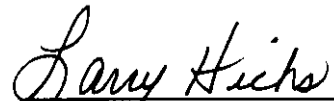
present the claim in a timely manner. The claim therefore must be denied.

AWARD:

The Claim is denied.


Robert L. Douglas
Chairman and Neutral Member


Donald D. Bartholomay
Employee Member


Larry L. Hicks
Carrier Member

Dated: 4-2-01