

PUBLIC LAW BOARD NO. 6334

Award No. 4  
Case No. 4

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 claim\* as presented by General Chairman R. D. Sanchez on May 8, 1997 to Assistant General Manager F. E. Hale shall be allowed as presented because said claim was not disallowed by Assistant General Manager F. E. Hale in accordance with Rule 18(a) (System File MW-97-4-TM).

\*The initial letters of claim will be reproduced within our initial submission.

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 provides, in pertinent part, that:

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.

(b) If a disallowance claim or grievance is to be appealed, such appeal must be in writing and must be taken within sixty (60) days from receipt of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employees as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the sixty-day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose.

(c) The requirements outlined in Paragraph (a) and (b), pertaining to appeal by the employee and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. All claims or grievances involved in a decision by the highest designated officer shall be barred unless within nine (9) months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. The parties may by agreement in any particular case extend the nine (9) months' period herein referred to.

(d) A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule be fully protected by the filing one claim or

grievance based thereon as long as such alleged violation, if found to be continues. However, no monetary claim shall be allowed retroactively from more than sixty (60) days prior to the filing thereof. With respect to claims and grievances involving an employee held out of service in discipline cases, the original notice of request for reinstatement with pay for time lost shall be sufficient.

In a letter from Second Vice Chairman Edward Posas, Jr., dated February 20, 1997, the Organization filed the disputed continuous Claim with Roadmaster Juan Rubio on behalf of certain named employees:

for Two Hundred Twenty Four (224) hours each at their respective straight time rate of pay and for all over time worked on claim dates listed, and for Eight (8) hours holiday pay, account the Carrier used contractor forces Trac Work Inc. to perform Maintenance of Way duties between Corpus Christi TX. and Robstown TX. on dates from Jan. 13-17, 1997, Jan. 20-24, 1997, Jan. 27-31, 1997, Feb. 03-07, 1997, Feb. 10-14, 1997, Feb. 17-20, 1997, and continuing dates, on the carrier's property.

Roadmaster Juan Rubio denied the disputed Claim in a letter, dated April 18, 1997, to the Organization's Second Vice Chairman. In the April 18, 1997 letter, the Carrier indicated, in pertinent part, that:

It is the Carrier's position that said claim has no merit as claimed by the organization for alleged violations of Rule 1, 2 and 29 of the current Agreement. Therefore, the organization Claim EP97-16 dated February 20, 1997, is respectfully denied.

In a letter dated May 5, 1997 to the Roadmaster from the Second Vice Chairman, the Organization expressed his disagreement with the denial of the disputed Claim. In a letter dated May 8, 1997 to Assistant General Manager Fidel E. Hale, General Chairman R. D. Sanchez appealed the denial of the disputed Claim.

In a letter dated September 12, 1997 from General Chairman Sanchez to Assistant General Manager Hale, the Organization first invoked Rule 18:

This is to advise that the Carrier failed to comply with Rule 18, Time Limits for Presenting and Progressing Claims or

Grievances, therefore we are requesting that the payment of this claim be allowed as presented.

We will be available to conference this claim on September 30, 1997 at 9:00 A.M., if this meets with your schedule.

In a letter dated September 30, 1997 to Assistant General Manager Hale, General Chairman Sanchez referred to a conference that occurred on September 30, 1997 and indicated, in pertinent part, that:

During conference we took great exception to the Carrier's letter dated April 18, 1997, from Mr. Juan Rubio, since he has not complied with Rule 18, paragraph (a), since there was no reason for the denial outlined in our agreement.

During conference we also pointed out that under the same Rule 18, paragraph (b) was also violated account I appealed this claim to you by my letter dated May 8, 1997 and no response was received.

The Organization moved the disputed Claim to the Third Division in a letter dated November 14, 1997. Assistant General Manager Hale, on behalf of the Carrier, sent a letter, dated December 15, 1997, to General Chairman Sanchez. In the December 15, 1997 letter, the Carrier first commented in writing about Rule 18. In a response dated January 7, 1998, General Chairman Sanchez disagreed with the contents of Assistant General Manager Hale's December 15, 1997 letter. In a letter dated January 21, 1997 to General Chairman Sanchez, Assistant General Manager Hale disagreed with the contents of General Chairman Sanchez's January 7, 1998 letter.

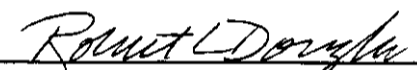
The record omits any evidence whatsoever that the Carrier had sought an extension of the period to deny the appeal or that the parties in any manner had extended the period for the Carrier to deny the appeal while the disputed Claim had remained on the property. The record omits any written evidence that the Carrier had denied the appeal in any manner on a timely basis on the property. The Carrier failed to present any written evidence that the Carrier had invoked Rule 18 in a timely manner on the property to challenge the propriety of the Organization's initial decision to file the disputed Claim with the Roadmaster.


The record indicates that the Carrier failed to respond to the appeal of the disputed Claim in a timely manner in writing on the property in a proper manner. In accordance with Rule 18, the Carrier therefore failed to submit a timely response of the Organization's appeal on the property. Under these circumstances

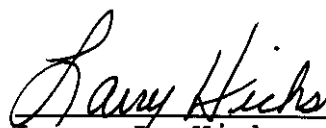
the disputed Claim shall be sustained.

AWARD:

The Claim is sustained in accordance with the Opinion of the Board. The Carrier shall make the Award effective on or before 30 days following the date of this Award.

  
Robert L. Douglas  
Chairman and Neutral Member

  
Donald D. Bartholomay  
Employee Member

  
Larry L. Hicks  
Carrier Member

Dated: 4-2-01