

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24043  
Docket Number SG-24155

George S. Roukis, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen  
{ Burlington Northern Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on Burlington Northern, Inc.:

On behalf of Mr. H. W. Bangston, who was suspended from April 12, 1980, to and including May 11, 1980, that he be paid for all time lost and that his record be cleared of any reference to this matter." (General Chairman file: C-80-227. Carrier file: SI-20 7/22/80)

OPINION OF BOARD: An investigation was held on March 17, 1980 to determine whether Claimant was responsible for operating a motor car past the east absolute signal without permission and subsequently occupying the plant at Buda, Illinois without authority. Based on the investigative record, Claimant was assessed a thirty (30) day suspension, effective April 12, 1980, for violating Rule 46 of the Rules of the Maintenance of Way Department by occupying main track without authority between the east and west absolute signal at Buda on March 10, 1980. Carrier concluded that he was not within the limits of his CTC permit and responsible for the derailment of his motor car. This disposition was appealed on both procedural and substantive grounds.

In considering this case, we must concur with Claimant's position on the procedural question raised. Claimant argues that Carrier failed to observe properly the claim denial requirements of Agreement Rule 53(A) which requires Carrier to notify the affected employee or his representative in writing of the reasons for the claim's disallowance. There is no question of failure to comply with the sixty (60) day time limitation of Rule 53(A) since Carrier's first step denial comported with this requirement. When the claim was initially presented to the Regional Signal Engineer on April 22, 1980, he responded by letter, dated June 2, 1980, that the claim was improperly before him since the March 17, 1980 investigation was handled by the Assistant Superintendent of Transportation at Aurora, Illinois. He denied Claimant's petition but offered no substantive response to the assertions and contentions contained in the April 22, 1980 letter of appeal. Claim, thereafter, in fact, was properly before Regional Signal Engineer and considered a proper appeal, but he denied that Rule 53(A) was violated. Carrier argued that the aforesaid official's denial of the claim was a sufficient response to the April 22, 1980 claim and consistent with the interpretative meaning of Rule 53(A). It averred that Third Division Award No. 11178 was on point with its position since the Board previously held that the applicable time limits rule in that dispute did not require "a valid and recognizable decision of allowance". While this decision at least on its face appears persuasive, it is without precedential effect here. Rule 53(A) requires Carrier to notify whoever filed the grievance in writing of the

reasons for such disallowance. The denial reasons might not be valid, cogently stated, defensible or recognizable, but they should address this claim. The Rule requires a denial rationale which presupposes a direct response to the claim. The Regional Signal Engineer's denial letter did not provide a reason for disallowing the claim and it was not mitigated because he believed the claim should have been filed with another Carrier official. He disallowed Claimant's petition without providing a reason and his mistaken assumption that he was not responsible for addressing the claim does not suffice as a bona fide explanation. Rule 53(A) requires a written reason when a claim is denied and it was not provided in the June 2, 1980 denial letter. The parties Agreement is clear on this point and we are not empowered to change it by judicial construction. Claimant's contention that he was denied independent consideration and decision by the Regional Signal Engineer is persuasive and thus, we will sustain his claim. (See Third Division Award No. 9832).

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of November 1982.

