

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42451  
Docket No. SG-42257  
16-3-NRAB-00003-130249**

**The Third Division consisted of the regular members and in addition Referee Roger K. MacDougall when award was rendered.**

**PARTIES TO DISPUTE:** (Brotherhood of Railroad Signalmen  
(  
(Northeast Illinois Regional Commuter Railroad  
( Corporation (Metra)

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Railroad Corp.(formerly Northeast Illinois Regional Commuter Rail Corp.):**

**Claim on behalf of J. L. Rozanski, for removal of any mention of this matter from his personal record as well as the difference between the straight-time rate of pay of a Signal Maintainer and that of his current classification, including the difference between each classification’s respective overtime rate, for all hours Carrier held the Claimant off of the Signal Maintainer’s position beginning on March 23, 2012, and continuing until this dispute is resolved, account Carrier violated the current Signalmen’s Agreement, particularly Rules 43, 53, and 58, when on March 23, 2012, it arbitrarily disqualified the Claimant from holding certain Signal Department positions and then refused the Organization’s request for an Unjust Treatment Hearing. Carrier’s File No. 11-21-829. General Chairman’s File No. 2-D-12. BRS File Case No. 14906-NIRC.”**

**FINDINGS:**

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

This case involves an alleged Rule violation for failing to hold an unjust treatment hearing.

The Organization says that the Carrier violated the current Signalmen's Agreement, particularly Rules 43, 53, and 58, when it arbitrarily disqualified the Claimant from holding certain Signal Department Positions without giving any reasons for the disqualification. They say that the Carrier also failed to provide due process to the Claimant when it refused the Organization's request for an Unjust Treatment Hearing.

The basic facts in this case are not in dispute. The Claimant notified the Carrier of his intent to return to service following a medical leave of absence on March 19, 2012. Without giving any reason, the Carrier informed the Claimant on March 23, 2012, that he was disqualified from holding any position except under the direct supervision of a Foreman or Lead Signalman. These restrictions could be reevaluated after a one-year period if requested by the Claimant. The Organization inquired as to the nature of the disqualification, after which the Carrier changed the evaluation timeline from a one-year period to three-month intervals. The Carrier imposed these restrictions on the Claimant without advising him or the Organization of the reasons thereof, or a mechanism to become re-qualified.

The Organization filed a request for an Unjust Treatment Hearing under the provisions of Rule 58 contending that the Carrier's disqualification was arbitrary, restricted the Claimant's seniority, and his rate of pay. The Carrier did not respond to the Organization's request for an Unjust Treatment Hearing.

The Carrier says that the Claimant was disqualified from numerous positions because he was now unable to perform the duties of those roles. It appears that there was no medical information to back this claim up, but simply a bald statement about

inability to perform these duties. The record contains no further information for this Board to assess.

The Carrier also says that, if, as the Organization alleges, the Claimant's disqualification was, in fact, disciplinary, then it would fall under the auspices of Rule 53. If it was not, and the Claimant was entitled to an unjust treatment hearing, then Rule 58 is applicable. They say that there is no basis under which the Claimant would be entitled to any relief and/or appeal under both rules simultaneously for the same alleged cause of action, his disqualification. It is incumbent for the Organization to specify which rules it believes were violated and supply all requisite facts in support of such claim. They say that the Organization may not make the allegation that the Claimant was both improperly disciplined and that yet also entitled to an unjust treatment hearing.

The Rules in question state, in relevant part:

**“RULE 53. INVESTIGATIONS AND DISCIPLINE**

- (a) An employee who has been in the service more than ninety (90) days will not be disciplined or dismissed from service without a fair and impartial investigation, at which investigation he may be assisted by one or more duly accredited representatives of his own choosing. He will be advised in writing at least seventy-two (72) hours prior to such investigation of the exact charge or charges against him. At such investigation he shall have the right to call witnesses to testify in his behalf. His representative and Carrier representatives will have the right to cross-examine witnesses (those who testify) in support of the charges for and against the employee.

**RULE 55. RIGHT OF APPEAL.**

The right of appeal of discipline imposed in the regular order of succession, as provided in the procedures of Rule 56, is hereby established. At a hearing or on an appeal the employee may, if he desires to be represented, be accompanied and represented by the ‘duly accredited representatives’ as that term is defined in this Agreement.

**RULE 56. TIME LIMIT CLAIMS AND GRIEVANCES.**

- (a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, 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 disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within sixty (60) days from receipt of notice 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 (60) 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 paragraphs (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. It is understood, however, that the parties may by agreement in any particular case extend the nine (9) month 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 of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for 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.
- (e) This rule recognizes the right of representatives of the Organizations parties hereto, to file and prosecute claims and grievances for and on behalf of the employees they represent.
- (f) This Agreement is not intended to deny the right of the employees to use any other lawful action for the settlement of claims or grievances provided such action is instituted within nine (9) months of the date of the decision of the highest designated officer of the Carrier.
- (g) This rule shall not apply to requests for leniency.
- (h) In determining the timeliness of an appeal or a letter of declination, the validity as to whether same has been declined or appealed within the sixty (60) day time limit is determined by using the date of the postmark.

#### **RULE 58. UNJUST TREATMENT.**

An employee who considers himself otherwise unjustly treated will have the same right of investigation and appeal as provided in this

Agreement, if written request is filed with the Carrier within twenty (20) days from cause of complaint. If such request is not made within twenty (20) days from last date of cause of complaint, all redress hereunder will be waived by all parties.

**RULE 43. DISPLACEMENT RIGHTS RETURNING FROM LEAVE OF ABSENCE, VACATION, PERSONAL SICKNESS, INJURY OR SUSPENSION.**

An employee in Seniority Class 1-5 returning from leave of absence, vacation or off duty account personal sickness, injury or suspension may return to his regular assignment, if still in existence and not held by a senior employee securing same in the exercise of displacement rights, or may within five days after reporting for duty exercise his seniority on any position in Seniority Class 1-5 bulletined during his absence that was acquired by an employee his junior. In the event his position was abolished or has been secured by a senior employee in the exercise of displacement rights during period he was absent, such employee shall upon return exercise displacing rights in accordance with Rules 31 and 33.”

After extensive and most able argument by the parties before this Board, we find that this dispute hinges on the Unjust Treatment Rule contained in Rule 58. It should be noted that this language is different from that contained in most of the awards provided to this Board for guidance, and, as such, is distinguishable.

The Carrier is correct that it normally has the right to determine qualifications of a position and, absent language to the contrary, whether an individual meets those qualifications. It also has the general right to request a medical clearance for someone returning to work. However, these facts are somewhat different. There is no allegation that the restriction imposed on the Claimant was medical in nature. Indeed, the record is bereft of any medical information related to this case. Similarly, it is clear that the Carrier has not set out to discipline this Claimant in this case. Simply put, they decided to restrict what positions he could hold. They may have had a reason for this, but it is not on the record. This was a relatively long-service employee who came back to work and was thence, based on the lack of evidence before this Board, arbitrarily restricted from certain positions.

There are very few cases in which an Unjust Treatment rule comes into play. This, however, is the very type of case for which this rule was written. When faced with the facts of the case, the Organization asked for the hearing contemplated by Rule 58. The evidence before this Board is that they did so in a timely manner. A simple lack of response by the Carrier is not enough. Rule 58 says that when an employee considers himself “otherwise unjustly treated [he] will have the same right of investigation and appeal as provided in this Agreement.” [emphasis added]

This Rule 58 invokes the investigation and appeal processes contained in Rules 53 and 55. Rule 55, in turn, specifically incorporates the procedures contained in Rule 56. Thus, we have a complete set of investigation, appeal and process issues incorporated within the ambit of Rule 58 to deal with cases of alleged unjust treatment.

In this case, the Carrier failed to respond to the request for a hearing. It did so at its peril. Thus, on the grounds of this procedural failure, the Board has no option but to allow this Claim.

As a result, this Board finds that the Organization has met its burden of proof in this matter.

**AWARD**

Claim sustained.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

Dated at Chicago, Illinois, this 31st day of October 2016.