

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 43350
Docket No. SG-43973
19-3-NRAB-00003-170006

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Northeastern Illinois Regional Commuter
Railroad Corporation (NIRC/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. (METRA):

Claim on behalf of J.L. Rozanski, for any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 53 when it issued the harsh and excessive discipline of a Letter of Reprimand against the Claimant, without providing a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on August 12, 2015. Carrier’s File No. 11-7-959. General Chairman’s File No. 11-D-15. BRS File Case No. 15578-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.

By notice dated July 14, 2015, the Claimant was directed to attend a formal Investigation and hearing on charges that he allegedly had failed to immediately notify the Carrier of a medical diagnosis of an occupational illness when medical treatment was obtained for an Incidental Injury that was reported on June 12, 2015, and allegedly failed to notify the Medical Department for approval of prescribed medication associated with his medical treatment. The Investigation was conducted, after a postponement, on August 12, 2015. By letter dated August 20, 2015, the Claimant was informed that as a result of the Investigation, he had been found guilty as charged, and that he was being assessed a Letter of Reprimand. The Organization subsequently filed the instant claim on behalf of the Claimant, challenging the Carrier's decision to discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because the Claimant received a fair and impartial hearing, because substantial evidence establishes that the Claimant was guilty as charged, and because the discipline imposed was not harsh, arbitrary, or an abuse of discretion, but was lenient. The Organization contends that the instant claim should be sustained in its entirety because the Carrier violated the sixty-day time limit for claims handling under Rule 56 of the Agreement, because the instant claim therefore must be allowed as presented, because the Claimant reported the injury immediately and in the proper manner, because the Claimant was honest throughout the entire proceeding, because the Carrier subjected the Claimant to disparately harsh treatment, and because the discipline imposed was harsh and excessive.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the procedural argument with respect to the timeliness of the Carrier's response to answer the Organization's appeal, and we find that that procedural argument has merit. The language of Rule 56 states the following:

“Should any such claim or grievance be disallowed, the Carrier shall, within sixty (60) days from the date same as 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 . . .”

The record in this case reveals that the appeal of the discipline assessed the Claimant was made on October 17, 2015. The Carrier’s response to the appeal was dated December 17, 2015. That appeal was denied by the Carrier sixty-one days after the filing of the appeal. Clearly, the Carrier’s answer was late and not in compliance of Rule 56.

As Rule 56 states above, since the claim was not disallowed within sixty days from the date that it was filed, the Board has no choice other than to allow the claim as presented. Therefore, the claim in this case is sustained.

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 14th day of December 2018.