Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD**
THIRD DIVISION

Award No. 43782
Docket No. SG-43941
19-3-NRAB-00003-160723

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation (formerly Louisville & Nashville):

Claim on behalf of T.E. Harris, for all Protective Benefits due him, account Carrier violated the current Signalmen's Agreement, particularly CSXT Labor Agreement No. 15-036-07, when, on May 13, 2015, it changed the Nashville Dispatch Center from a five-person operation to a four-person operation, which created an adverse effect on the Claimant and entitled to Protective Benefits that Carrier refused to compensate. Carrier's File No. 2015-189842. General Chairman's File No. 15-67-02. BRS File Case No. 15476-L&N."

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.

Over the years of their bargaining relationship, the Carrier and the Organization have negotiated what are known as "protective benefits," which are designed to ease the adverse consequences experienced by employees when they are displaced and/or forced to relocate as a result of a displacement—typically a loss of compensation and the costs of moving from one geographic work location to another as a result of a displacement. Protective benefits are available to employees only in limited circumstances, however.

At the time of the events that gave rise to this dispute, the Claimant, T.E. Harris, was assigned as an Electronic Signal Specialist (ESS) in the Nashville Dispatch Center in Nashville, Tennessee. On May 13, 2015, the Carrier abolished the ESS Vacation Relief position at the Nashville Dispatch Center, reducing the complement from five ESS positions to four. The Claimant, despite having 19 years with the Carrier at the time, was the least senior ESS at the Nashville Dispatch Center, having transferred there in 2009. Initially, the Claimant was assigned to another ESS position in Nashville, but on May 30, 2015, he was displaced from that position by a senior ESS, Carlos Bettancourt.[1] The Claimant then exercised his displacement rights. There was no ESS position into which he could bump, and he ended up taking a position as a Signal Maintainer in the Radnor Hump Yard, which is also in Nashville. The pay rate for Signal Maintainers is significantly lower than that for ESSs.

The Claimant filed an application for protective benefits with the Carrier's Labor Relations department on May 30, 2015. The Carrier responded by letter dated July 28, 2015, from Pamela Roark, denying the claim. On August 2, 2015, Claimant e-mailed Ms. Roark asking about what his next steps might be and whether he could appeal. Ms. Roark responded by e-mail on August 27, 2015, informing the Claimant that an appeal could not be filed by e-mail and that he should contact the General Chairman of the Organization, Gregory Vincent, for further steps. (There is other evidence in the record that Ms. Roark telephoned Chairman Vincent at or around the same time to inform him.) Claimant did not respond or file a formal appeal of the Carrier's July 28, 2015, denial.

In the interim, however, between the time when the Claimant applied for protective benefits and the Carrier's response, the Organization filed not one but two claims on Claimant's behalf for protective benefits: one dated June 21, 2015, addressed to Rob Miller and one dated July 6, 2015, addressed to Pamela Roark. The contents of

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[1] **Bettancourt had to exercise displacement rights over the Claimant because he himself been displaced from his original position by an even more senior ESS, Jeremy Meier.**

the letters were the same. By letter dated August 22, 2015, the Carrier responded, denying both claims, on the basis that they were duplicative of the claim that Mr. Harris had filed on his own behalf on May 30, 2015, and that the Carrier had denied on July 28, 2015, and the Carrier had no obligation to respond further. The Carrier's response went on, however, to state that Claimant was not entitled to protective benefits under CSX Implementing Agreement 15-036-07, which was limited to ESSs who were affected by the Carrier's 2007-2008 reorganization of ESS positions throughout the system, because the Claimant did not become an ESS or transfer to Nashville until 2009.

The Organization filed two appeals by letter dated October 1, 2015, claiming that it had not received a response from the Carrier about Claimant's protective benefits and that the Carrier was in violation of Rule 54 of the Agreement, Time Limits for Handling Claims, because it had not responded in a timely fashion to the original claim. The Carrier responded by letter dated December 1, 2015, referring to both letters of appeal and referencing its August 22, 2015, response to the original claims. The Carrier asserted that the current appeal letters were procedurally defective because they were duplicative, and again explained why the Claimant was not entitled to protective benefits under Agreement 15-036-07.

The parties having been unable to resolve the dispute through the normal claims procedure, the matter was appealed to the Board for final and binding adjudication. The Organization continues to contend that the claim should be allowed as presented because Carrier violated Rule 54 and that the Claimant was indeed entitled to protective benefits. The Carrier asserts its position that pursuant to Board precedent, the claims must be dismissed because they were duplicative, and that the protective benefits established in Agreement 15-036-07 do not apply to the Claimant.

There is no provision in the parties' Agreement for submitting multiple claims for the identical incident. Here, the Claimant first filed his own claim, on May 30m 2015, which the Carrier denied on July 28, 2015. That decision was never appealed. The Organization filed two identical claims, addressed to different Carrier personnel, on June 21, 2015, and July 6, 2015, while Mr. Harris' claim was pending. The Carrier responded, denying both of the Organization's claims, by letter dated August 22, 2015. The Organization filed an "appeal," stating that it had not received any response from the Carrier, by letter dated October 1, 2015.

Board precedent is consistent: duplicate claims are incompatible with the Railway Labor Act and must be dismissed. The Organization filed duplicate claims, which precedent indicates must be dismissed. The Carrier's original denial of protective

benefits in response to the Claimant's application for them was never appealed and is a closed matter. Under the circumstances, the Boards will dismiss the claim.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 16th day of July 2019.