

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43785  
Docket No. SG-43979  
19-3-NRAB-00003-170004**

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

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

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation (formerly Baltimore & Ohio):**

**Claim on behalf of T.P. Fillman, for \$652.63 in mileage expense and \$311.70 in earned travel time, account Carrier violated the current Signalmen’s Agreement, particularly CSXT Labor Agreement No. 15-55-99, Apprentice Training Program Section C(2), when it failed to provide pre-paid airfare and then refused to compensate the Claimant the mileage expense he incurred and the time he traveled in his personal vehicle when assigned to report to Carrier’s training location in Atlanta, Georgia, on May 10, 2015. Carrier’s File No. 2015-191179. General Chairman’s File No. 15-22-99. BRS File Case No. 15444-B&O.”**

**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.

The Organization has raised a threshold procedural issue that the Board must address before it can consider the substance of this claim. According to the Organization, the claim must be sustained as presented because the Carrier failed to respond properly within 60 days of the date the claim was filed, which is the time limit established in Rule 54 for the Carrier to notify whoever filed the claim or grievance if it is going to disallow a claim. Rule 54 of the Signalmen's Agreement states:

**"All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer authorized to receive same within 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 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..."**

The claim was filed on July 17, 2015, by Local Chairman N.C. Freesland. Assistant Chief Engineer J.F. Parr responded by letter dated September 4, 2015, which is within 60 days from when the claim was filed. However, the Carrier's response was addressed not to Freesland, whose address per the record is in Virginia, but to the General Chairman of the Organization, at an address in West Virginia.

Rule 54 requires the Carrier to *"notify whoever filed the claim or grievance (the employee or his representative)..."* (Emphasis added.) Local Chairman Freesland filed the claim. The Carrier responded to General Chairman Efaw. There can be no dispute that the Carrier failed to notify the person identified in Rule 54 as the individual to be notified and was accordingly in violation of the Rule. The Carrier minimizes the mistake as a "clerical error," implying that it should be overlooked. This Board has previously held, in Award No. 28734 (McAllister, 1991), that such a mistake warrants sustaining the claim. While that Award involved a different Carrier and a different Organization, the contractual language under consideration by the Board—"Should any such claim or grievance be disallowed, the Carrier shall within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative)..."—was exactly the same. The Board's mandate is to enforce the terms of the contract negotiated and agreed by the parties. Presumably, they agreed on who should be

notified for a reason. The Carrier articulated no reason why its mistake was or should be considered harmless, and it did not submit any contrary authority. The Board must decide cases based on the arguments and precedents submitted to it. In this case, the Organization has established that the Carrier violated Rule 54 when it notified the wrong individual. Rule 54 also establishes the consequences for such a failure: “If not so notified, the claim or grievance *shall* be allowed as presented.” (Emphasis added.) Accordingly, the Board will allow the claim.

**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 16th day of July 2019.