

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43873
Docket No. SG-45089
20-3-NRAB-00003-180497**

The Third Division consisted of the regular members and in addition Referee Paul Betts when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of E.M. Webb, for immediate reinstatement into United Health Care (UHC) National Health and Welfare Plan, and compensation for any out of pocket expenses he may have incurred, account Carrier violated the current Signalmen’s Agreement, particularly Rules 32 and 65, when it improperly changed his health care provider from UHC to the Union Pacific Railroad Employees Health System. Carrier's File No. 1683288. General Chairman's File No. S-32,65-1628. BRS File Case No. 15830-UP. NMB Code No. 155.”

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 Claimant began service with the Carrier on November 29, 1999. In January 2000, an implementing agreement was established between the Carrier and the former Chicago and Northwestern Railroad (CNW). Under the implementing agreement, certain employees, including the Claimant, were permitted to retain their health and welfare benefits (United Health Care), but all employees hired after the effective date of the implementing agreement had to be enrolled in the Union Pacific Railroad Employees Health System (UPREHS). The Claimant elected to retain his UHC health and welfare benefits. In November 2009, the Claimant bid on to a position requiring a transfer from Zone 5 to Zone 4. Part of the implementing agreement requires that employees' seniority begins upon the successful transfer from one zone to another. Because the Claimant moved from Zone 5 to Zone 4, the Carrier reasoned that the Claimant had voluntarily elected to relinquish his former seniority and start a completely new seniority on Zone 4. Through a standard review of health plan participants, the Carrier determined that the Claimant, as a result of starting his seniority over, fell within the UPREHS plan and not the UHC plan. As a result, the Carrier changed the Claimant's health plan from UHC to UPREHS on September 1, 2016. The Organization then filed the instant claim, maintaining that the Carrier improperly switched the Claimant's health and welfare coverage from UHC to UPREHS.

In summary, the Organization argues a) the Claimant did not elect to have his health and welfare benefits altered, b) the Claimant was not an employee hired after the effective date of the implementing agreement and has a right to retain his UHC plan, and c) the Carrier was in violation of Rule 32.

In summary, the Carrier argues a) the claim is procedural defective in that it was not filed within the sixty calendar day time period under Rule 56, b) because the Claimant voluntarily elected to transfer and start a new seniority date, he was no longer covered under the UHC plan per the language of the implementing agreement, c) the Organization failed to satisfy its burden of proof obligation, and d) the remedy demand is excessive.

Here, the Carrier raised a procedural argument, alleging the Organization failed to file the claim within the sixty-day time limit of Rule 56. In pertinent part, Rule 56 states the following:

“Rule 56 – Claims and Grievances

...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) calendar days from the date of the occurrence on which the claim or grievance is based...”

The Claimant’s health plan was changed from UHC to UPREHS on September 1, 2016. The claim was initially filed by the Organization on March 13, 2017, well outside the sixty-day time limit of Rule 56. The Board reviewed the Organization’s continuous claim argument and found it lacking.

Rule 56 time limits are clear and unambiguous. The Board does not have the authority to change or modify existing rules between the parties. Nor does the Board have the authority to create exceptions to existing rules. In the instant case, the Organization failed to present the claim in writing within 60 calendar days from the date of the occurrence. As such, the Board has no choice but to deny the claim.

Although the Board may not have repeated every item of documentary evidence or all the arguments presented, we have considered all the relevant evidence and arguments presented in rendering this Award.

AWARD

Claim denied.

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 28th day of January 2020.