

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44194
Docket No. SG-45429
20-3-NRAB-00003-190155**

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

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

STATEMENT OF CLAIM:

“Claim on behalf of J.K. Borowski, for compensation for all lost time, including overtime, Railroad Retirement service months, and vacation credits from August 14, 2017, to September 20, 2017; account Carrier violated the current Signalmen’s Agreement, particularly Rule 57, when it failed to hold an Unjust Treatment Hearing after it improperly removed the Claimant from service and unjustly required him to undergo an Employee Assistance Program evaluation. Carrier's File No. 1695173. General Chairman's File No. N 0128. BRS File Case No. 15965-UP. NMB Code No. 4.”

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.

In the instant claim, the Organization alleges the Carrier violated the Agreement when it failed to conduct an Unjust Treatment Hearing after the Carrier, via Manager referral, removed the Claimant from service to undergo an EAP examination.

By letter dated August 14, 2017, the Claimant was removed from service for an EAP evaluation regarding an incident that occurred on August 1, 2017. By letter dated August 18, 2017, the Organization requested an Unjust Treatment Hearing under Rule 57 of the Agreement regarding the Claimant's removal from service. An Unjust Treatment Hearing was not granted, and the instant claim was initiated on October 13, 2017.

The Organization argues the Carrier violated the Agreement by denying the Organization's request for an Unjust Treatment Hearing under Rule 57.

The Carrier argues a) the Carrier has the managerial right to determine fitness and ability of its employees, b) the Organization has failed to prove that the Claimant's removal for an EAP evaluation was arbitrary or capricious, and c) the Organization has failed to prove the Carrier violated the Agreement.

As the Carrier argues, boards of arbitration have consistently upheld the Carrier's right to determine fitness and ability, but the question raised here is if the Carrier violated the Agreement by unilaterally denying the Claimant's request for an Unjust Treatment Hearing under Rule 57.

Rule 57 of the Agreement states the following:

"An employee who considers himself unjustly treated, other than covered by these rules, will have the same right of hearing and appeal as provided in Rule 55 B if written request is made to his immediate supervisor within ten (10) calendar days of cause of complaint. Failing to dispose of the complaint in such hearing, appeal may be taken in accordance with Rule 56..."

Both parties supplied the Board with precedent Awards to support their respective positions, but the best evidence in the instant claim is the actual Agreement language regarding Rule 57. The language of Rule 57 is clear and unambiguous.

A written request was made to the Carrier within the ten-day time limit. The language establishes the employee's right to an Unjust Treatment Hearing when not covered by other Agreement rules. The record is absent any explanation as to why the Carrier denied the request for the Unjust Treatment Hearing.

Given the facts as presented here, the Board finds the Carrier violated the Agreement by denying the Organization's request for an Unjust Treatment Hearing under Rule 57. As a result, the claim is sustained in part. The claim is sustained as it relates to the Carrier's failure to conduct a Rule 57 Unjust Treatment Hearing but denied as it relates to the charge that the Claimant was improperly removed from service and required to undergo an EAP evaluation. As such, the Claimant is to be compensated as described in the Statement of Claim from August 14, 2017, to September 20, 2017.

The Board must note that the fact pattern in this case is unique and holds that this award is not to be used as guidance or precedent in any future cases.

Although the Board may not have repeated every item of documentary evidence, nor all the arguments presented, we have considered all the relevant evidence and arguments presented in rendering this Award.

AWARD

Claim sustained in accordance with the Findings..

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 30th day of September 2020.