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

Award No. 44317
Docket No. SG-45692
20-3-NRAB-00003-190627

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens 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 J.A. Guerrero, D.M. Poore, G.L. Yarborough, W.M. Yarborough and D.R. Zachary, for 8 hours each a day at their respective rate of pay, including any overtime from July 15, 2018 and until project is done; account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule and Rule 65, when it permitted contractors to perform the scope-covered work of erecting and assembling of the brackets to the signal mast, digging trenches for signal cable, installing foundations for signals and instrument cases, and erecting signal masts starting July 15, 2018, at Church Street West (Milepost 206.35), Church Street East (Milepost 206.50), and Donner Pass Road, thereby causing the Claimants a loss of work opportunity."

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.

At the time this dispute arose, Claimants were assigned to various positions in Carrier's Signal Department. On July 15, 2018, and thereafter, an outside contractor installed highway crossing signals at M.P. 206.35 Church Street Crossing West, M.P. 206.50 Church Street Crossing East, and Donner Pass Road. The work included erection and assembly of brackets to the signal mast, digging trenches for signal cable, installing foundations for signals, and instrument cases, and erecting signal masts.

The Organization claims that the work began on July 15, 2018, with contract forces, five (5) men working eight (8) hours each day. However, the Carrier responded that that the property at issue was leased to the City of Truckee, California on December 14, 2016, and that the Carrier did not perform any of the claimed work on this property during the time period that the Organization alleged.

The Organization filed this claim which was appealed to the highest officer on-property. As the parties were unable to resolve the claim, it is now properly before this Board for final adjudication.

The Organization contends that the Carrier committed a procedural error when it sent out a standard denial letter that in no way explained the reasons for disallowance of the claim. For instance, the Organization points out that the Carrier's defenses were not developed on property.

The Organization further contends that the work is Scope-covered and should have been assigned to its members to the exclusion of outside contractors. The Organization contends that the purpose of a highway crossing is a circuit to protect train movement and therefore, Claimants lost a work opportunity when their contractual right to install highway crossings was given to a noncovered contractor.

The Organization contends that the Carrier's attempt to explain that they do not own the property has no merit, because while the claim was developed on property, the Carrier failed to support its claim that this was a "no cost, no benefit"

arrangement. Furthermore, it contends that the control of the property is at most, a dispute in fact, which this Board cannot resolve.

The Carrier contends that throughout the handling of the dispute, it has maintained that the contract employees performed no scope-covered work. Specifically, the undisputed facts in evidence show that the claimed work was done on property not under the specific control of the Carrier. The Carrier contends that the work contracted by a third party not under the Carrier's control is not Scope-covered.

The Carrier contends that it provided sufficient reasons in its initial denial and the Organization's procedural argument should be denied as well.

Rules 56 of the parties' Agreement provides, in part:

> **"RULE 56. TIME LIMIT CLAIMS AND GRIEVANCES.**
> **(a) 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) 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 Sixty (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, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."**

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The parties' Agreement provides at Rule 56 that all claims must be filed within 60 days of the date of the occurrence on which the claim is based. There is no question that the Claim here was timely filed. The Rule goes on to say that if the claim is to be disallowed, the Carrier must "notify whoever filed the claim or grievance…. in writing of the reasons for such disallowance" within 60 days and "[I]f not so notified, the claim or grievance shall be allowed as presented." This Board has recognized that the timelines serve to expedite the procedure of filing and considering claims and preventing unnecessary delays on the property. Here, the Carrier provided an answer

within sixty days, but the Organization challenges that answer as failing to give the "reasons" for the disallowance.

In Third Division Award 4529, this Board noted that the purpose of requiring the Carrier to give a reason for its disallowance is to permit the Organization to "determine the relative merits of the parties' respective contentions and help determine whether or not an appeal is desirable." When the Carrier fails to comply with this obligation, the Board has held that the proper remedy is to sustain the claim, without regard to the underlying merits of the claim. *Id.*

When the Carrier provides an answer that fails to constitute a reason under the provisions of the Agreement, the initial claim must be sustained. In Third Division Award 11986, this Board found that "We find no basis for claim in this case, therefore your claim must be denied," failed to provide sufficient reason for the disallowance. The Board wrote,

> **"There was no way Claimant could tell from that statement what he was required to meet. Did it mean basis in fact, basis in law, identity of claimant, or what did it mean?**
>
> **We hold that it was too indefinite, uncertain and general to constitute a reason under the provisions of the agreement."**

In Award 1 of Public Law Board 34, the Carrier's disallowance stated, "You have not furnished written proof that this alleged violation occurred as claimed; therefore, in the absence of such written proof the time slip is returned to you declined." The Board found that the reason given was not a "reason" as contemplated by the Agreement, as it failed to frame the issues in dispute.

In Award 206 of Public Law Board 7163, the Carrier presented a disallowance which ostensibly covered seven separate claims. That Board concluded,

> **"This Rule requires the Highest Designated Labor Relations Officer to provide the reason for the denial of a claim. It is not sufficient to merely state that the claim is denied. Our review of the denial letter issued by Pastza shows that the reason for denying this particular claim was not**

stated in the letter. Instead, this appears to be a form letter for the purpose of denying several unrelated claims."

The "reasons" presented by the Carrier in the disallowance of the instant claim are the same boilerplate rationales given for denial in many, if not nearly all, of the Carrier's disallowances. The Organization included 24 identical letters sent in response to other claims in the on-property handling. Whether the claim was for overtime or an unjust treatment hearing, the Carrier's responses were indistinguishable.

Such pro forma handling does little to frame the issues in dispute or to determine the relative merits of the parties' positions. We hold that where the Carrier issues nothing more than a blanket denial letter setting forth only a boilerplate explanation for the denial which does not address the claim in any specific manner, it fails to give reasons for the disallowance. While we hesitate to sustain a claim on technical grounds, the parties themselves agreed what must occur when the Carrier fails to timely disallow the claim as contemplated.

The claim must be allowed as presented but shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances in the future.

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 23rd day of October 2020.