

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44318
Docket No. SG-45700
20-3-NRAB-00003-190634**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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 L.W. Groh, for return to his Skilled Signal Maintainer’s position assigned to Gang No. 2078, compensation equal to the difference in the rates of pay between Maintainer and Signaller’s for all hours that the Claimant worked, subsequent to Carrier disqualifying him from his Skilled Signal Maintainer position from April 30, 2018, continuing until he is returned to said position; account Carrier violated the current Signalmen’s Agreement, particularly Rule 57, when it failed to render a decision for the Unjust Treatment Hearing held on May 31, 2018, and when it failed to provide the transcript for said Hearing.”

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 was assigned to a Skilled Signal Maintainer position in Carrier's Signal Department. The Carrier disqualified the Claimant from his Signal Maintainer's position on April 30, 2018. On May 3, 2018, the Organization requested an Unjust Treatment Hearing in accordance with Rule 57.

The Unjust Treatment Hearing was granted and held on May 31, 2018. The Carrier did not provide a transcript of the Investigation and did not render its decision until November 5, 2018. On August 2, 2018, the Organization filed this claim asserting that the Carrier violated the Agreement when it failed to provide the Organization or the Claimant with the transcript or the Carrier's decision.

The Carrier disallowed the Claim in a letter dated September 10, 2018, which reads,

"This refers to the Organization's letter dated August 2, 2018 which presents a claim filed on behalf of employees; Lance Groh...., hereinafter referred to as "Claimants."

After review of the matter, the Carrier finds your claim is without merit. As the moving party, the Organization bears the burden of proof. Simple allegations do not satisfy your burden of proof obligation, or justify presentation of a claim. The Organization must provide documents or evidence in support of its allegations. If such documentation is to be provided, the Organization should furnish such with its appeal letter to ensure compliance with the good faith provisions of the Railway Labor Act, and allow the labor officer an opportunity to fully review the allegation prior to any future conference.

Regarding the claimed remedy, the Organization must cite the specific agreement provision(s) and/or arbitrated authority which support payment, as well as demonstrate why payment is justified considering the specific factual circumstances presented in each claim. Without such, the Organization fails to meet its burden of proof requirement.

The Organization has failed to establish a prima facie case for the alleged violation set forth in the claim. This claim is respectfully denied in its entirety for a lack of merit and agreement support. Failure to take exception with anything in the Organization's letter is not to be construed as acquiescence or acceptance of your position in this claim."

As the parties were unable to resolve the claim, it is now properly before this Board for final adjudication.

"Rule 57- UNJUST TREATMENT, provides,

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.

Any complaint made by one employee against another will be made in writing."

Rule 55 – INVESTIGATIONS, DISCIPLINE AND APPEALS, states, in Section B,

"B. If a waiver is not offered and accepted, a formal investigation will be held and the employee will have the right to be represented at the investigation by an employee of his choice or by his duly accredited representative, and the employee and his representative will have the right to interrogate all witnesses produced by the Carrier. If the employee desires to have witnesses present at the investigation, the employee will have the right, at his expense, to bring to the investigation such witnesses. The Carrier will have the right to interrogate witnesses produced by the employee. The degree or level of discipline offered an employee on a waiver will not be increased to a higher level due to the employee not accepting the waiver. The employee may, however, be held out of service pending such investigation if serious infractions of the rules or safety are involved. In all disciplinary cases, except as otherwise provided in the footnote,

the employee will be notified in writing of the specific charge or charges against him within fifteen (15) calendar days from the date the Carrier had knowledge of the alleged offense. Certified U.S. Mail will be considered written notice.

When the Claimant is being held out of service, the investigation will be held within fifteen (15) calendar days from the date the employee is held out of service. When the Claimant is not being held out of service, the investigation will be held within thirty (30) calendar days from the date the employee is charged.”

The Organization contends that the Carrier failed to “provide the reasons for the disallowance” as required by Rule 56 of the Agreement. The Organization contends that the Carrier’s vague response to the claim does not fulfill its obligations and results in a procedural violation of time limits.

The Organization contends that while the Claimant was granted an Unjust Treatment Hearing, the Carrier failed to provide the Organization or the Claimant with the transcript of the Unjust Treatment Hearing, and the Carrier did not issue its decision until November 5, 2018, or 158 days after the hearing, which was after the initial claim and appeal had been filed. The Organization contends that the Carrier’s failure to provide the transcript was a violation of Rule 57 of the Signalmen’s Agreement.

The Carrier contends that it holds the managerial prerogative to determine fitness and ability and such decisions are subject to review by this Board only as to whether the determination was arbitrary. Further, it is well established that once the Carrier has determined that an employee does not possess the requisite fitness and ability to perform a job, the burden shifts to the Organization to show that the Carrier’s determination is arbitrary or capricious. The Carrier contends that the Claimant demonstrated a lack of general signal knowledge and competency in performing Signal Maintenance duties. The Organization has failed to provide any evidence to refute the Carrier’s basis for removing the Claimant.

The Carrier contends that Rule 57 does not require Carrier to issue an investigation transcript in a non-disciplinary matter. The Carrier contends that Rule 55(B) does not require a transcript for a Rule 57 hearing. The Carrier contends that

in the past, not every Unjust Treatment Hearing has been recorded or transcribed. The Carrier contends that the Organization's reliance on Third Division Award 38001 is misplaced, as the award was wrongly decided.

Rule 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."

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 disallowance presented by the Carrier in the instant claim appears to apply to the Claimant but refers to him as “claimants.” The “reasons” are the same boilerplate rationales given for denial in many, if not nearly all, of the Carrier’s disallowances. The Organization included other 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. Here, the Carrier's disallowance does not refer to the Unjust Treatment Hearing.

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.