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

Award No. 44319
Docket No. SG-45720
20-3-NRAB-00003-200040

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 D.F. Newland, for 8 hours at his respective overtime rate of pay; account Carrier violated the current Signalmen's Agreement, particularly Rule 12, when on August 20, 2018, and August 21, 2018, Carrier assigned Electronic Technician Inspectors, Mr. Humerik and Mr. Serio, to perform normal maintenance work on the Geneva Subdivision resulting in a loss of work opportunity for the Claimant."

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 worked as a Skilled Signal Maintainer, with assigned hours from 0630 to 1430, in Berkeley, Illinois, on the Geneva Subdivision. On August 20 and 21, 2018, the Second Shift Maintainer was unavailable to work his regularly assigned shift. To help cover the second shift, the Carrier assigned Electronic Technician T.A. Humenik, from Gang #3748, on August 20, 2018, and Electronic Technician M. Serio from Gang #3771, on August 21, 2018, although the Claimant was assigned to the territory.

The Manager of Signal Maintenance provided a statement:

> **"Mr. Humenik on August 20th and Mr. Serio on August 21st, 2018 [were] both covering ETI duties at Berkeley. The existing ETI Tom Reinl was temporarily off territory. Mr. Newland is not qualified to cover this work. Additionally, the Signal Maintainer duties were covered by Curtis Patterson on the 20th and George Harkens on the 21st. I do not validate either claim."**

On September 11, 2018, the Organization filed this claim asserting that as the regular assignee, the Claimant should have been called to the overtime work when the Second Shift Maintainer was registered absent on the Claimant's territory. The Carrier disallowed the claim by letter dated November 8, 2018:

> **"This refers to the Organization's letter dated September 11, 2018, which presents a claim filed on behalf of employee(s); Dean Newland …hereinafter referred to as "Claimant."**
>
> **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."

Thereafter, the claim 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 parties' Agreement provides, at Rule 12- SUBJECT TO CALL:

"A. Employees assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railroad, and will notify the person designated by the Management of their regular point of call. When such employees desire to leave such point of call for a period of time in excess of two (2) hours, they will notify the person designated by the management that they will be absent, about when they will return, and, when possible, where they may be found. Unless registered absent, the regular assignee will be called, except when unavailable due to rest requirements under the Hours of Service Act, as amended by Public Law 94-348."

The Organization contends that the Carrier has failed to follow the provisions laid forth in Rule 56 of the current Signalmen's Agreement. The Organization contends that the Carrier failed to "provide the reasons for disallowance" as required by Rule 56, arguing that the Carrier's vague response to the initial claim did not provide the reasons for disallowance and was not in conformity with the requirements of Rule 56.

The Organization further contends that the Carrier violated Rule 12 of the Agreement, because the Claimant should have been offered the work opportunity prior to the Carrier's assignment of other employees to work on the Claimant's assigned territory. The Organization contends that the Claimant was available to work and stayed to help cover the second shift.

The Carrier contends that the Organization failed to refute its position that the Claimant is not qualified to do the work of the ETI position. An employee who is not qualified to perform work simply cannot stake a claim to owning the work. The Carrier contends that it possesses the fundamental managerial right to make determinations of fitness and ability of its workforce.

The parties' Agreement provides, at Rule 56 – 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 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim be disallowed, the Carrier will, 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 will be allowed as presented, but this will 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 give only "reasons" which are the same boilerplate rationales given for denial in many, if not nearly all, of the Carrier's disallowances. The Organization included several 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.