

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44786  
Docket No. SG-45831  
22-3-NRAB-00003-200148**

**The Third Division consisted of the regular members and in addition Referee Meeta A. Bass when award was rendered.**

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

**STATEMENT OF CLAIM:**

**“Claim on behalf of R.J. Lutz, for re-examination and return to service with compensation for all lost time, including overtime and with benefits unimpaired from November 12, 2018, continuing until he is returned to service, account Carrier violated the current Signalmen’s Agreement, particularly Rules 52, 53, and 65, when, on October 26, 2018, it improperly withheld the Claimant from service and then failed to schedule a medical re-examination after he properly requested said re-examination. Carrier’s File No. 1714003. General Chairman’s File No. S52,53,65-1762. BRS File Case No. 16125-UP. NMB Code No. 127.”**

**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.**

On February 20, 2018, the Claimant had knee surgery. His physician cleared the Claimant to return to work with a restriction to wear a knee brace while working in July 2018. The Claimant provided medical documentation to the Carrier's Health Medical Services (HMS) that indicated he suffered from a serious condition that affected his balance and mobility. HMS then requested additional paperwork and testing to determine the Claimant's fitness for duty. In a letter dated November 16, 2018, the Organization submitted a claim and requested a re-examination on behalf of the Claimant in accordance with Rule 52. The Organization attached a letter from the Carrier dated October 26, 2018, denying the Claimant's return to work due to medical restrictions, and a letter from the Claimant's Medical Physician dated November 11, 2018, releasing him to return to work with no medical restrictions.

Rule 52, 53, 56, and 65 are incorporated herein as if fully rewritten. Selected provisions of said rules read as follows:

**RULE 52 – PHYSICAL EXAMINATIONS**

**“A. Physical Disqualification**

An employee subject to the Agreement between the parties hereto who is disqualified as a result of an examination conducted under the Carrier's rules governing physical or mental examinations will be notified in writing, with copy to his General Chairman of his disqualification and will be carried on leave of absence.

**B. Requesting Re-Examination**

If the employee feels his condition does not justify removal from the service or restriction of his rights to service, he may request re-examination. Such request must be submitted by him or his representative within thirty (30) days following notice of the disqualification, unless extended by mutual agreement between the General Chairman and Labor Relations. He may be given further examination as follows:

1. The employee will be re-examined by a physician designated by the Carrier and a physician of the employee's choice who will both be graduates of a Class (A) medical school of regular medicine. If the two physicians agree that the man is disqualified, their decision is final; if they agree the man is qualified, he will be returned to service.”

**RULE 53 – EXAMINATIONS**

**“Examinations or re-examinations that employees may be required to take, will, if possible, be conducted during regular working hours without deduction in pay therefore.”**

**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.**

**RULE 65 – LOSS OF EARNINGS**

**“An employee covered by this agreement who suffers loss of earnings because of violation or misapplication of any portion of this agreement will be reimbursed for such loss.”**

By letter dated December 26, 2018, the Carrier responded to the Organization’s November 16, 2018, claim and request for re-examination. The Carrier contended the claim was without merit, and the Organization must provide documents or evidence in support of its allegations. The Carrier argued the Organization must cite the specific Agreement provision and demonstrate why payment is justified. The Carrier also stated the Organization failed to establish a prima facie case for the alleged violation.

By letter dated January 9, 2019, the Organization submitted an appeal on behalf of the Claimant, contending the Carrier violated Rules 52, 53, 56, and 65 of the parties’ Agreement. The Organization stated that it had provided the supporting documents in its first level response, the Claimant received a full release from his physician, and the claim should be allowed as presented due to noncompliance with Rule 56. By letter dated February 26, 2019, the Carrier denied the Organization’s appeal. The Carrier explained that the medical condition of the Claimant warranted

the workplace restrictions and attached the Claimant's Medical Comments History and its Policy S1-S5 Medical Standards for Safety Critical Workers with loss of consciousness of unknown cause. The Carrier also stated its compliance with Rule 56.

On April 23, 2019, the parties conferenced the claim, and their positions remained unchanged. By letter dated June 6, 2019, the Organization supplemented its responses to the appeal denial and statements made during the conference. The positions of the parties remained unchanged, and this dispute is now properly before the Board for adjudication.

#### **Position of the Organization**

The Organization contends that the Carrier violated Rules 52, 53, and 65 of the parties' Agreement when it improperly withheld the Claimant from service and failed to perform a medical re-examination after a proper request by the Organization. The Organization also contends that Carrier violated Rule 56 of the Agreement when it failed to properly respond to the initial claim within the 60-day time limit. The Organization argues that the vague response only caused the additional delay in returning the Claimant to work. Lastly, it is the position of the Organization that the claim should be sustained.

#### **Position of the Carrier**

The Carrier contends that the Organization did not meet its burden of proof to establish a violation of the cited rules. The Carrier asserts its compliance with the cited rules. The Carrier points out that the Claimant had significant medical issues. The Carrier asserts that it has the inherent right to manage its operation to provide a productive and safe environment with exceptions noted as to law and the parties' Agreement. Furthermore, the Carrier contends that Rule 52 requires shared responsibility in the process. The Carrier argues that the rule requires the Claimant to be reexamined by a physician of his choice. The Carrier explains there is no proof that the re-examination actually occurred or that the Claimant designated a physician. Lastly, the Carrier contends that the claim should be denied.

After review of the record and reflection on the Advocates' arguments, this Board finds that Article 56 requires the Carrier to notify the Organization in writing of the reasons for such disallowance. The evidence of record establishes that the Organization provided sufficient notice of the claim. A review of the denial letters

indicates that the Carrier uses a general form letter to advance claims to the next response level and does not set forth the reasons for the denial as prescribed by Rule 56. The Organization is on point with its argument that the contract language requires case-specific reasons for the denial to promote resolution at the earliest level of the grievance process. The Board finds that the use of a form letter at the first-level response fails to refine the issue for the next level response. In addition, the lack of reasons for denial of the claim negates the Organization's opportunity to assess whether or not the claim should proceed to the next level. If the requirement for reasons is to have any meaningful construction, the reasons should be stated at the first-level response rather than the second-level response as shown here and further makes the first-level response a vain and futile act in this process. Thus, the Board finds a violation of Rule 56.

While it is generally agreed among Arbitrators that a case should be heard on the merits rather than make a decision based on procedural objections, the negotiated language of the Agreement is clear as to the remedy for the improper response by the Carrier, and obligates the Board to allow the claim as presented.

**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 19<sup>th</sup> day of September 2022.