

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44787  
Docket No. SG-46091  
22-3-NRAB-00003-200256**

**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.T. McNamara, for the removal of the disqualification from his record and placement on his former Skilled Signal Maintainer position along with the difference in pay, including overtime, between the Signaller position he was forced to and the Skilled Signal Maintainer position he was removed from starting on September 4, 2018, and continuing until he is placed back on the Skilled Signal Maintainer position; account Carrier violated the current Signalmen’s Agreement, particularly Rules 55(B), 57, and 65, when it failed to render a decision for the Unjust Treatment Hearing held on October 17, 2018, and failed to provide the transcript for hearing. Carrier's File No. 1714966. General Chairman's File No. S-57(UTH), 65-1766. BRS File Case No. 16123-UP. NMB Code No. 32.”**

**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 Carrier assigned the Claimant to a Skilled Signal Maintainer position in Carrier's Signal Department. On September 4, 2018, Carrier disqualified the Claimant due to his alleged inability to maintain and repair signals and signal systems. The Organization requested an Unjust Treatment Hearing. The Unjust Treatment Hearing was held on October 17, 2018. Carrier did not provide a copy of the transcript of the proceedings or written decision.

By letter dated December 11, 2018, the Organization filed an appeal on behalf of the Claimant alleging a violation of Rules 55(B), 57, and 65 when it held an Unjust Treatment Hearing, and failed to provide the transcript or render a decision to the Organization nor the Claimant. The Organization attached the Disqualification Letter, the Unjust Treatment Request Letter, and emails concerning the date of the Unjust Treatment Hearing.

By letter dated January 30, 2018[9], the Carrier responded to the Organization's claim dated December 11, 2018. the Carrier denied the claim with a form letter response. The Carrier found the claim to be without merit. The Carrier's response informed the Organization that it must provide documentation to support its claims, must cite specific agreement provisions and /or arbitral authority, and demonstrate the necessity of payment. The Carrier concluded that the Organization failed to meet its burden of proof and denied the claim.

By letter dated February 13, 2019, the Organization appealed Carrier's decision and reiterated its previous position, and raised the alleged violation of Rule 56 for failure to state the reasons for disallowance. By letter dated April 8, 2019, Carrier responded to the Organization's appeal letter dated February 15, 2019, stating its compliance with the cited rules.

On April 23, 2019, the parties conferenced this claim, and the positions of the parties remained unchanged. In a letter dated May 22, 2019, the Organization responded to Carrier's letter dated April 8, 2019. The positions of the parties remained unchanged, and this dispute is now properly before the Board for adjudication.

Rule 55, 56, 57, and 65 are incorporated herein as if fully rewritten. Selected provisions of said rules read as follows:

**RULE 55 INVESTIGATIONS, DISCIPLINE AND APPEALS**

**"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.”

#### **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 57 – UNJUST TREATMENT**

“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 55B 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 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.”

**Position of the Organization**

The Organization contends that the Carrier violated Rules 55, 56, 57, and 65 of the parties’ Agreement. The Organization argues that the Carrier failed to provide the transcript and render a decision of the determinations made following the Unjust Treatment Hearing. The Organization also argues that the Carrier infringes on the due process rights of the Claimant when the Carrier fails to render a decision and transcript of the proceedings. The Organization also contends that the Carrier violated Rule 56 when it failed to specify reasons for the denial of this claim. The Organization argues that all the denial letters of record contained the same language, and there were no specific reasons given for the denial of this claim. The Organization concludes that the claim should be sustained.

**Position of the Carrier**

The Carrier contends that it afforded the Claimant the opportunity to discuss his concern, and after the unjust hearing, the parties agreed that the Claimant would enroll in training classes. The Carrier asserts that the parties did not negotiate into the CBA the requirement to provide a transcript for a Rule 57 hearing; this requirement only exists for discipline events. The Carrier also asserts that Rule 57 indicates that if the Claimant requests a hearing, that one will be held in accordance with Rule 55b of the CBA, which does not require a transcript of a hearing. The Carrier argues that the parties have not historically recorded or transcribed every unjust treatment hearing. The Carrier also contends that management sent the denial letter with its reasons for disallowance in compliance with Rule 56. Further, the Carrier contends that the Organization failed to meet its burden of proof. It is the position of the Carrier 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 is using 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.