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

Award No. 44789
Docket No. SG-46094
22-3-NRAB-00003-200760

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 N.T. Humphries, for 8 hours a day at his respective rate of pay for all Thursdays and Fridays he was scheduled to work, and his overtime rate of pay for all Tuesdays and Wednesdays he was required to work; account Carrier violated the current Signalmen's Agreement, particularly Rules 23 and 65, when beginning March 19, 2019, Carrier changed the Claimant's assigned days and assigned rest days, and force assigned him to the new position, without advertising the new position. Carrier's File No. 1721730. General Chairman's File No. S-23, 65-1799. BRS File Case No. 16234-UP. NMB Code No. 139."

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 Interlocking Repairman position within the Carrier's Signal Department. The Organization alleges that on March 19, 2019, the Carrier improperly bulletined the position with a change in rest days to Tuesdays and Wednesdays. In a letter dated May 7, 2019, the Organization filed a claim on behalf of the Claimant, contending the Carrier violated Rules 23, 65, and the Side Letter dated July 23, 2001, alleging the Carrier improperly bulletined the Skilled Interlocking Repairman position without advertising the changed rest days. The Organization stated that the Carrier force-assigned the Claimant to the changed assignment when both parties agreed in the July 23, 2001 Side Letter and requested the Carrier compensate the Claimant. The Organization attached Bulletin Number Z4S57053, the side letter dated July 23, 2001, and email communication between the parties supporting its position.

RULE 23 – SIGNAL MAINTAINERS HEADQUARTERS
"Signal maintainer headquarters will be at a tool house or shop area which will be provided with suitable lockers and other facilities required to properly perform his duties and will be kept in good and sanitary condition. Reasonable washing and toilet facilities will be made available. Light and heating facilities will be provided on request and when considered necessary. When a change is made in the location of a signal maintainer's headquarters, or when a signal maintainer's territorial limits are materially increased, or when the starting time is changed more than two (2) hours or when one or both of the rest days are changed, the position will be re-advertised as a new position when so requested by the incumbent through the local chairman. Such request must be in writing and made within twenty (20) calendar days from date of change. The incumbent of the position to be re-advertised will remain on the position until assignment is made, and he will then make his displacement in accordance with Rule 46. It is recognized that the Carrier may combine maintenance territories and assign more than one maintainer to the territory in terminals and areas containing parallel mainlines. It is further recognized that the Carrier may combine territories and maintainers on single track main lines if there is an operational need. If the parties are in disagreement regarding the combination of territories and work for a single main line track, the Carrier may nevertheless put the assignments into effect, subject to the

right of employees to process the dispute as a grievance or claim under this agreement."

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 June 24, 2019, the Carrier responded to the Organization's claim dated May 7, 2019. 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 July 14, 2019, the Organization appealed the Carrier's decision and reiterated its previous position. The Organization stated the claim was not presented in accordance with Rule 56 of the parties' Agreement. The Organization alleged that the language concerning the reasons for the denial was not within the time limits. The consequences of the Carrier's failure to do so were adopted verbatim from Article V, of the August 21, 1954, National Agreement. The Organization contended Carrier was outside of the required 60-day time limit to respond to the claim. In a letter dated September 3, 2019, Carrier responded to the Organization's appeal letter, contending the Claimant agreed to the changed rest days. Carrier explained the Organization failed to provide a written request by the Claimant for the position to be

re-advertised as outlined in Rule 23. Carrier asserted the claim was without merit and denied the claim.

On November 12, 2019, the parties conferenced the claim; however, their positions remained unchanged. In a letter dated January 17, 2020, the Organization responded to the Carrier's letter dated September 3, 2019, and the conference dated November 12, 2019. The Organization asserted that the Carrier's Manager sidestepped the negotiating process by changing the job assignment without consulting the Organization or Carrier's Labor Relations Department. The Organization attached letters to support its position. The dispute is now properly before the Board for adjudication.

Position of the Organization

The Organization contends that the Carrier violated Rules 23, 56, 65, and the Side Letter dated July 23, 2001, when it changed the Claimant's rest days from Tuesdays and Wednesdays, without bulletining the position for bid. The Organization argues that the Carrier should be required to re-advertise the position with the correct rest days. As a result of the violation, Organization contends that the Carrier should compensate the Claimant at the overtime rate for all hours worked on Tuesdays and Wednesdays and 8 hours straight-time on all Thursdays and Fridays he was scheduled to work beginning on March 19, 2019. The Organization further contends that the Carrier failed to properly respond to the claim as outlined by Rule 56 of the Agreement. As a result of said violation, the Organization maintains that the claim should be allowed as presented.

The Position of the Carrier

The Carrier contends that its first level response was sufficient and gave reasons for its denial of the claim. The Carrier argues that Rule 23 allows an employee to accept certain changes to a position without re-bulletining. The Carrier also argues that the Claimant could have requested that it be bulletined if he did not accept the changes. The Carrier points out that the Claimant did not request it be bulletined but instead signed a letter accepting the changes to the assignment. The Carrier further contends that the July 23, 2001 side letter is not applicable in this case because the only change made to the position was to the rest days. Moreover, the Carrier contends that the remedy demanded is unsupported by the facts. Lastly, 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 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 19th day of September 2022.