

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44790
Docket No. SG-46133
22-3-NRAB-00003-200746**

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 J.P. Cornett, for 160 hours at his straight-time rate of pay; account Carrier violated the current Signalmen’s Agreement, particularly Rules 53 and 65, when, it improperly withheld him from service on March 9, 2019, through April 5, 2019, and required him to attend a physical examination, without compensating him for lost time. Carrier's File No. 1721691. General Chairman's File No. N 0201. BRS File Case No. 16238-UP. NMB Code No. 155.”

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 March 8, 2019, the Claimant had flu-like symptoms and temporarily lost consciousness while working on an assignment. The Claimant drove himself to the Emergency Room, where he was evaluated and treated for the flu. The ER physician cleared him to return to work without restrictions. However, his manager removed the

Claimant from service pending additional medical documentation. The Carrier received the supplemental medical document on April 2, 2021.

By letter dated May 1, 2019, the Organization submitted a claim and requested that Carrier compensate the Claimant 160 hours at his straight-time pay rate, in response to Carrier removing him from service for a minor health event. The Organization stated that the Claimant went to the Emergency Room for the flu on March 8, 2019, when the treating physician gave him a clean bill of health to return to work the following day and should not have been withheld from service. The Organization attached the written statement of the Claimant. The Organization contends that the Carrier violated Rule 53, 56, and 65; these rules are incorporated herein as if fully rewritten.

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 June 24, 2019, Carrier responded to the Organization’s May 1, 2019, claim. The Carrier stated that the claim was without merit, and the Organization must provide documents or evidence in support of its allegations. The Carrier stated that 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 July 2, 2019, the Organization appealed Carrier's June 24, 2019, denial letter and addressed the Carrier's response. The Organization pointed out that documentation was provided with the claim. The Organization argued the provisions of Rule 56 require reasons for disallowance of the claim and that the claim should be allowed as presented per Rule 56. By letter dated August 27, 2019, Carrier denied the claim. The Carrier asserted the long delay was due to the Claimant and treating physician failing to provide the necessary documentation.

On November 12, 2019, the parties conferenced the claim, and both parties' positions remained unchanged. By letter dated December 9, 2019, the Organization responded to Carrier's denial letter dated August 27, 2019, and conference dated November 14, 2019. The Organization continued to advocate its position and attached the Doctor's Clearance Letter to help 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 53 and 65 of the parties Agreement when it improperly withheld the Claimant from service. The Organization also contends that the 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 explained all the denial letters contained the same language and were not in accordance with Rule 56 or Article V of the August 21, 1954, National Agreement, due to the fact that the letters did not address the facts of the case nor specify the reasons for why the claim was without merit. It is the position of the Organization that the claim should be allowed as presented.

Position of the Carrier

The Carrier contends that Rule 53 does not apply to medical examinations or evaluations. The Carrier also contends that it has the right to withhold an employee from services when there are medical concerns until said employee can be medically cleared to safely perform his duties. The Carrier argues that the Claimant was not sent to an examination or re-examination. The Carrier explains that the Carrier requested medical documentation to verify his fitness for duty, and when the Carrier received the information on April 2nd, the Claimant was returned to duty. The Carrier further contends that there was no blanket denial of this claim. The Carrier argues that the Carrier's initial response states the reason for the denial and complies with Rule 56. It is the position of the Carrier that the Organization failed to meet its burden of proof, and 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.