

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44914
Docket No. SG-47008
23-3-NRAB-00003-210647**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

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

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 B.C. Mitchell, for compensation of 8-hours a day at his respective straight time rate of pay while held from service on March 26, through April 6, 2020; account Carrier violated the current Signalman’s Agreement, particularly Rules 5, 6, and 65, when the Claimant was exposed to Covid-19, Carrier failed to properly compensate the Claimant and withheld him from service, resulting in a loss of earnings to the Claimant. Carrier’s File No. 1737271. General Chairman’s File No. S-5,6-0014. BRS File Case No. 16458-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.

At the time this dispute arose, the Claimant was assigned to Gang 2734 headquartered at Lufkin, Texas in the Carrier's Signal Department. On March 26, 2023, the Claimant reported to his supervisor that he had developed symptoms consistent with COVID-19. The Carrier placed the Claimant on an involuntary Medical Leave of Absence and told him not to report for duty during a 14-day quarantine. The Claimant was held out of service from March 26 until April 6, 2020.

In a letter dated April 16, 2020, the Organization filed a claim on behalf of the Claimant. The Carrier denied the claim in a letter dated June 4, 2020. Following discussion of this dispute in conference, the positions of the parties remained unchanged, and this dispute is now properly before the Board for adjudication.

The Organization pointed out that the Vice General Chairman that filed the claim did not receive the second level denial as required in Rule 56. Furthermore, the Organization explained that the Carrier acknowledged it failed to email the proper Vice General Chairman.

The Organization contends that the Carrier committed a fatal procedural error when it failed to respond to the Vice Chairman in its first level denial. The Organization contends that Rule 56 of the parties' Agreement requires that when a claim is disallowed, the Carrier must notify the individual who filed the claim. The Carrier's failure to respond to the proper representative within the allotted time limit must result in the default penalty of the claim being allowed as presented.

The Organization contends that the Carrier caused the Claimant to miss work opportunities by failing to inquire about the COVID-19 test that the Claimant obtained through his personal physician. The Organization contends that the Carrier violated the clear provisions of Rule 5, 6, and 65 when it unilaterally placed the Claimant on an involuntary Medical Leave of Absence, arbitrarily causing the Claimant a loss of earnings and failed to reimburse him for the loss in compensation.

The Carrier contends that the Organization failed to prove its case. The Carrier contends that record shows that there was a valid reason to instruct the Claimant to comply with the Center for Disease Control ("CDC") guidelines and to quarantine after reporting that he had been exposed to COVID-19. The Carrier contends that it took necessary precautions in instructing its employees to comply with CDC guidelines after being exposed to, or contracting, the virus.

The Carrier contends that the Organization has not shown that there has been

a violation of the Agreement. While employees are guaranteed 40 hours of work in a week, this provision is dependent upon the employee being able to perform service for those 40 hours. Here, so long as he was quarantining in accord with the CDC guidelines, the Claimant was not able to work, and was not entitled to any compensation. The Carrier contends that the Claimant was entitled to benefits from the Railroad Retirement Board.

This Board must address the procedural argument raised by the Organization before the merits of the grievance can be reached. The Organization has asserted that the Carrier failed to comply with Rule 56 of the parties' Agreement, which reads, in part:

- 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 Carrier does not deny that the second denial of the claim was sent, not to the Vice General Chairman who filed the claim, but to the General Chairman. Thus, the person who filed the claim was not notified in writing of the reasons for the disallowance within 60 days.

This Board addressed the impact of the failure to comply with Rule 56 in Third Division Award 43950, an on-property award, writing,

Rule 56 time limits and notification requirements are clear and unambiguous. The Board does not have the authority to change or modify existing rules between the parties. Nor does the Board have the authority to create exceptions to existing rules. In the instant case, the Carrier failed to meet Rule 56 requirements by failing to notify the person who filed the claim...within the 60-day time limit. As such, the Board has no choice but to sustain the claim as presented. Per Rule 56, this Award is not to be

considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

We find no reason to depart from this reasoning here. The Carrier does not dispute that it did not comply with Rule 56. The claim shall be sustained by operation of the parties' Agreement, but is not to be considered as precedent for similar grievances.

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 21st day of April 2023.