PUBLIC LAW BOARD NO. 5564
Case No. /Award No. 171

Organization File No.: RS-2332MD-001
Carrier File No.: 8-2023-3
Claimant: A. Lloyd

NORTHEAST ILLINOIS REGIONAL	**)**
COMMUTER RAILROAD CORPORATION	**)**
(METRA)	**)**
	)
-and-	**)**
	)
BROTHERHOOD OF MAINTENANCE	**)**
OF WAY EMPLOYES DIVISION – IBT	**)**
RAIL CONFERENCE	**)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. A. Lloyd, by letter dated January 5, 2023, for alleged dishonesty and falsification of a Metra record when he allegedly altered his rules card was arbitrary, unwarranted, without the Carrier having met its burden of proof and in violation of the Agreement (System File RS-2332MD-001/8-2023-3 NRC).

2. As a consequence of the violation referred to in Part 1 above, Claimant A. Lloyd shall now be compensated in accordance with the Organization's claim (Employes' Exhibit "A-2").

FINDINGS:

The Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over this dispute; and that the parties to said dispute were given due notice of investigation thereon.

The Claimant established and maintained seniority in the Carrier's Maintenance of Way Department. This case involves whether the Claimant's dismissal violated the Agreement.

The Claimant occupied a rules-qualifying position that required him to successfully pass an annual Operating Rules Examination. After receiving a score in a range where he was deemed "conditionally qualified" on September 22, 2022, the Claimant was required to retake the test within three to ten days and receive a passing score. The Carrier discovered that he did not retake the test, and after questioning him about the matter, charged him with dishonesty and falsification of Carrier records by submitting an altered rules card to indicate successful completion of the Exam on October 1, 2022.

The Organization challenges the Claimant's discipline on procedural grounds and on the merits. In the first of these procedural challenges, the Organization argues that the Carrier defaulted on the claim when the highest officer designated by the Carrier ("HDO") failed to disallow the claim in accordance with Rule 33(c). Specifically, the Organization alleges that it timely filled its appeal on behalf of the Claimant with the Carrier's HDO, Labor Relations Director R. Abudayyeh, and she never responded. Rather, the Carrier's response was submitted by Senior Labor Relations Specialist S. Dutka, who was not formally designated by the Carrier as the proper HDO to whom appeals are filed. For this reason, the Organization submits that the Carrier violated the Agreement because its highest designated officer failed to disallow the instant claim pursuant to Rule 33.

Rule 33 states, in relevant part,

> **RULE 33. TIME LIMIT ON 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 sixty (60) days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within sixty (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 shall be allowed as presented, but this shalt not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.**
>
> **(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken with sixty (60) days from receipt of the notice of disallowance, and the representative of the Carrier shall be**

> **notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employees as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the sixty (60) day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose.**
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> **(c) The requirements outlined in paragraphs (a) and (b), above, pertaining to appeal by the employee and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. All claims or grievances involved in a decision by the highest designated officer shall be barred unless within nine (9) months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group, or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the nine (9) months period referred to herein.**

The Carrier argues that Rule 33 grants it full discretion to designate which of its officers will handle disputes on its behalf and does not mandate that any specific individual, title, or officer respond to claim appeals submitted by the Organization. It further contends that Rule 33 does not impose any notification requirements on the Carrier regarding such designations and that its June 2, 2022 letter merely states that appeals "should be submitted" to Ms. Abudayyeh and does not state that she alone must author responses or sign denials. The Carrier also contends that it has consistently exercised its discretion to respond to appeals through various staff members in the Labor Relations Department and the Organization has acknowledged their authority to respond on behalf of the Carrier. Finally, the Carrier contends that the arbitral awards cited by the Organization are either outdated, subsequently discredited by later decisions, or premised upon contractual provisions and factual circumstances that do not exist in the instant dispute and that none of these awards

impose a requirement that only the formally designated "HDO" may respond to grievances.

The Organization relies on several Awards in support of its position, most significantly recent on-property Award 45318, which involved the same procedural issue presented here and nearly identical facts relating to that issue. In that Award, the Board considered whether the June 2, 2022 letter from the Carrer notifying the Organization that appeals of disciplinary matters should be submitted to Labor Relations Director R. Abudayyeh only authorized Ms. Abudayyeh to respond to the Organization's appeals. Because Sr. Labor Relations Specialist Sylwia Dutka responded to the Organization's claim in that case, rather than Ms. Abudayyeh, the Board held that the claim must be allowed as presented because the Carrier's appropriate designated officer failed to disallow the claim.

Although the Organization acknowledges that arbitration decisions under the Railway Labor Act are not controlling, it submits that Award 45318 must be upheld in this case in the interests of consistency, stability, and finality of arbitration decisions unless it is found to be palpably erroneous. Third Division Awards 15570, 22547, 32404, 38350, 40959, 41846, 42189 and Award 1 of Public Law Board (PLB) No. 6086. The palpably erroneous standard may be the proper one to apply here, but that is not to say that every existing award standing for a general principle must be followed without careful consideration of the facts, contract language, and circumstances presented in each case, especially when there are competing precedents.

After reviewing the awards cited by the parties in this case, previous boards that have addressed similar fact patterns have reached the same result as the Board in Award 45318. Third Division Awards 27850, 25091, 23943, 18002, and PLB 1844, Award 14. For example, in Third Division Award 23943, the Board considered an instance where the carrier's Labor Relations Officer responded to a final appeal instead of the General Manager who was authorized to do so. The Board sustained the claim based on the failure of the General Manager to respond, reasoning that,

> **All the authorities cited by the parties have been reviewed and it is clear that the great weight of authority in closely related circumstances supports the Organization's position. Those awards hold that the officer of the Carrier who had been previously designated as the individual to**

> **receive claims or appeals must be the officer who responds to such claims or appeals.**

Similarly, Third Division Award 18002 supports the holding in Award 45318. In that case, the Board held,

> **We agree with the organization that Carrier violated Section 1(a) of the August 21, 1954 National Agreement, governing the parties to this dispute, when it permitted its Roadmaster, R. C. Mingus, to decline the claim, rather than having its Assistant Division Engineer of Track, A. W. Wilson, who was authorized by Carrier to receive claims on its behalf, deny the claim.**

On the other hand, the Carrier cites to Third Division Award 27590, where the Board was skeptical of cases often cited by the Organization for the general proposition that only the individual authorized to receive claims may properly deny claims. In this Award, the Board describes the reasons why Third Division Awards 11374, and 16508 may be distinguished from those supporting the general proposition stated above. Specifically, the Board noted that the claim in Award 11374 was actually sustained because the carrier officer authorized to receive the claim failed to proffer the reasons for the disallowance as required by the agreement. The Board also noted that the main consideration in sustaining the claim in Award 16508 was that the carrier referred the claim to the Chief Engineer, without a denial by the Division Engineer as required by the rule in the parties' agreement. The Board also noted that these cases are cited as support for the general proposition stated above without any basic understanding of their complete context, as in Third Division Award 22710.

On the whole, Award 27590 is thorough and well-reasoned, and it teaches that before simply adopting a general proposition from previous cases in a "one-size-fits-all" manner, it is necessary to consider how differences in the contract language and the context of a case may affect the applicability of the general proposition to the case being decided. After taking that approach in the case before it, the Board in Award 27590 noted that the language in the agreement provided that the notification of disallowance of a claim must be made by the "Carrier," rather than any particular "officer," and, therefore, the carrier's denial of the claim by an officer other than the one to which the claim was submitted did not violate the agreement. Other Boards

have followed the reasoning in Award 27590. Third Division Awards 35774, 33990, and 33479.

Although on-property Award 45318 did not go as deep as Award 27590 into the analysis of the applicability of the general proposition that only the individual authorized to receive claims may properly deny claims, and it relied on awards criticized in Award 27590, we find that its holding is supported by precedent and the language in Rule 33. As discussed above, there is long-standing precedent standing for the general proposition that only the individual authorized to receive claims may properly deny claims. Third Division Awards 27850, 25091, 23943, 18002, and PLB 1844, Award 14. More significantly, the language of Rule 33 is different from the claims processing language in Award 27590, where the Board was unwilling to limit who could provide notice of the disallowance of a claim to a particular officer when the language provided that such notice shall be provided by the "Carrier." Rule 33(c) addresses the appeal of a disallowed claim from "the highest officer designated by the Carrier to handle such claims," and requires that the claim shall be barred unless within nine months, proceedings are instituted before the NRAB or another Section 3 Board. The Carrier argues that the purpose of the January 2, 2022 letter was to inform the Organization where claims should be submitted and it does not specifically identify the highest designated officer or use the term "HDO," and it asserts that whoever responded to the claim for the Carrier should be and has been treated as the HDO. These arguments are not without merit, nevertheless, it was a reasonable interpretation of Rule 33 for the Board to find that the individual identified in the June 2, 2022 letter as the officer who was authorized to receive claims was "the highest officer designated by the Carrier to handle such claims" and must also respond to those claims, consistent with the precedent cited above. Therefore, we find that the reasoning in Award 45318 stands on its own and cannot be found to be palpably erroneous or obviously wrong. For these reasons, we will follow the holding in Award 45318 and allow the claim as presented here because the appropriate designated officer of the Carrier failed to disallow the claim. Under these circumstances, it is unnecessary to consider the other procedural issue presented by the Organization or the merits of the case.

AWARD

Claim sustained. The Carrier is ordered to make the Award effective on or before 45 days following the date the Award is transmitted to the parties.

Michael G. Whelan
Chairman and Neutral Member

Sylwia Dutka
Carrier Member

Zachary C. Voegel
Organization Member

Dated: March 4, 2026