

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13918
Docket No. 13803
07-2-06-2-12

The Second Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

PARTIES TO DISPUTE: (*International Brotherhood of Electrical Workers*
(BNSF Railway Company

STATEMENT OF CLAIM:

- “1. That in violation of the controlling Agreement, dated April 1, 2004, Telecommunication Department Electronic Technician Daniel Duff of Minneapolis, Minnesota was arbitrarily and unjust removed from the service of the Burlington Northern Santa Fe Railway Company on March 18, 2004 and was deprived of six (6) days of compensation.
2. That the Burlington Northern Santa Fe Railroad Company be ordered to promptly make Telecommunication Department Electronic Technician Daniel Duff whole for all lost wages, rights, benefits and privileges denied him as a result of his arbitrary removal from service.”

FINDINGS:

The Second 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.

Claimant filed a claim for hearing loss with the Carrier's Claim Department in the fall of 2003. According to the Carrier Claimant during an interview with the Claim Agent stated he was having trouble with balance while riding his motorcycle when the sun was setting. (Claimant argues that he never told the Carrier the aforementioned.) Based upon that conversation the Claim Agent advised the Claimant's Supervisor of the Claimant's alleged condition after which it was decided that Claimant should not be allowed to work at height until it was determined whether or not he had a medical condition that would restrict him from being able to perform his normal duties.

On November 25, 2003, the Claimant's Supervisor instructed the Claimant to avoid performing work that required him to climb ladders or work at height until the Carrier received adequate medical information to determine whether he could be released to perform all of his normal duties. On December 1, 2003, the Carrier wrote Claimant and instructed him to provide medical information verifying that he was able to perform all of the duties of his position.

The Carrier received no response regarding Claimant's medical condition after which the Regional Medical Care Manager called the Claimant's physician concerning the request and again faxed the letter requesting information on Claimant's condition on January 8, 2004. No one answered the phone and the Regional Medical Care Manager left a detailed message explaining what the Carrier needed.

Subsequently, the Carrier received medical information from the Claimant's physician which included updates concerning his condition through November 3, 2003, but did not indicate whether Claimant could perform all of his duties. On February 25, 2004 the Carrier again faxed a letter to the Claimant's physician requesting detailed information on the Claimant's fitness for duty. At the same time Claimant was given written instructions that he must comply with the directives of the Medical Care Manager or he would be removed from service because the

Carrier had not received the requested medical information from the Claimant or his physician. The Carrier made a final attempt to secure the information when it called the Claimant's physician. Again, there was no answer, thus, it left a detailed message explaining its needs.

The Carrier received no response to its inquiries and on March 19, 2004 Claimant was removed from service pending the Carrier's receiving a report from his physician explaining whether he could perform all of the duties assigned to his position. After being removed from service, Claimant was able to get his physician to provide the Medical Care Manager with the required information after which Claimant was returned to service without any restrictions on March 26, 2004.

The Organization and Claimant argue that Claimant was unjustly removed from service and deprived of six days of compensation. Claimant also states he has never told anyone that he gets dizzy while riding his motorcycle.

Carrier on the other hand argues that this is "a case of - enough is enough" and any lost time in this instance was the result of Claimant's inaction to provide medical documentation that he was fit for service over a 3 ½ month grace period, after which it finally removed him from service because it was still lacking the required information.

A review of the Claimant's statements of October 12, 2004 and December 1, 2005 are revealing and assist the Board in its resolution of this dispute. In the October 12 statement he wrote: "I may have checked dizziness by mistake on a questionnaire..." and then in the December 1st statement he said: "I was having a balance issue..." Excuses follow both of those statements, but each verifies a legitimate concern by the Carrier over whether or not the Claimant could fulfill all of his assigned duties and are consistent with the Claim Agent's statement. The Claimant was fully aware that he had been placed on limited duty pending a detailed report from his physician regarding his statements to the Claim Agent yet he did nothing about the restriction for three plus months.

The Carrier has a right to withhold an employee from service if it has a legitimate reason to believe they are not fit for duty. In this instance the Carrier acted reasonably when it removed Claimant from service. The Carrier attempted

on several occasions to get the Claimant to provide the needed medical information over an extended period of time before it removed him from service. Carrier showed patience and its actions were not arbitrary. Any loss of earnings in this instance was the result of the Claimant's failure to provide the requested medical documentation. The Board finds no basis on this record for sustaining the claim.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 6th day of August 2007.