

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14162
Docket No. 14008
16-2-NRAB-00002-140041**

The Second Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood Railway Carmen-Division of TCU/IAMAW
(The BNSF Railway Company

STATEMENT OF CLAIM:

- “1. That the Burlington Northern Santa Fe violated the terms of our Agreement dated February 1, 2006, in particular Rules 6, 8 and 35, when they prevented the Claimant, Carmen Kurt Lambert, from returning to service until May 9, 2013, after he was released by his personal physician from a medical condition on May 3, 2013 and then placing him on light duty until May 23, 2013 and limited his hours to eight (8) hours per day with no overtime.**
- 2. That accordingly, the Carrier be ordered to compensate the Claimant, Carmen Kurt Lambert, fifty-six (56) hours at the straight time rate and sixteen (16) hours of pay at the overtime rate for arbitrarily withholding him from service from May 3 to 9, 2013, and further, an additional one hundred and twelve (112) hours at the overtime rate of pay for placing him on light duty from May 9 through 23, 2013.”**

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.

At the time of this dispute, the Carrier employed the Claimant, Kurt Lambert, as a Carman in the Carrier's Powder River Division in Alliance, Nebraska. On or about July 15, 2012, the Claimant began a medical leave of absence due to an injury that eventually required oral surgery. On May 3, 2013, the Claimant's personal physician released the Claimant to return to work, but with prescriptions for the drugs Valium and hydrocodone, to be taken by the Claimant for pain as needed.

At the time of the medical release from his physician, the Claimant had been off work for nine and one-half consecutive months. Since Carman perform difficult manual work involving heavy equipment in a safety-sensitive environment, it is well established that, in situations like that of the Claimant's, the Carrier has the right to have its own medical officials review the circumstances and ensure that returning the injured employee to duty will not unreasonably endanger the employee or others.

On May 6, 2013, the first regular business day after the date of his physician's release, the Carrier's Medical Department contacted the Claimant and offered him a transitional work program that would permit the Claimant to gradually resume full and unrestricted work as a Carman. The record reflects that, within two more days, the Claimant accepted the transitional work program offered by the Carrier. Thus, on May 9, 2013, the Claimant resumed work for the Carrier under the terms of the transitional work program. After two weeks in the transitional work program, the Claimant resumed full, unrestricted duties for the Carrier.

Under the transitional work program to which the Claimant agreed to, the Claimant was restricted to working no more than eight hours per day. That eight-hour-per-day restriction continued for the two-week duration of the transitional

work program, after which the Claimant was able to resume overtime work when available pursuant to the normal procedures on distributing overtime to Carmen. Rule 8(b) governs when a Carman is eligible to be called for overtime work, stating: “Overtime will be distributed to employees on each shift by establishment of an overtime call list on each shift in accordance with their qualifications. . .”

Because it is clear that the Carrier has the right to take reasonable measures to assure that an injured employee is qualified to safely resume work when released by his personal physician, the Board is unable to find that the brief delay between the date of the physician’s release (Friday, May 3, 2013), and the dates when the Claimant returned to transitional and then unrestricted duties (May 9 and May 24, 2013, respectively) was unreasonable. In addition, because the Claimant agreed to the provisions of the transitional work program, the Board cannot find that returning the Claimant to work in that gradual manner, including restricting him to straight-time hours for the first two weeks, violated the Agreement. The Claimant was not forced to perform light duty work or to restrict his work hours despite being able and qualified to work without those restrictions; the Claimant accepted the restrictions as parts of a reasonable, short term program to get him back to full duty after almost a year of being off work altogether.

Accordingly, the Board cannot find that the Carrier violated the Agreement, as alleged, by not returning the Claimant to work until May 9, 2013 or by not assigning him overtime work during the two weeks from May 9 to May 24, 2013. Consequently, the instant Claim must be denied.

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.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 20th day of December 2016.