

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33627
Docket No. MW-33954
99-3-97-3-382

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Missouri Pacific
(Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly withheld Mr. G. L. Weems from service on February 1, through March 13, 1996 (Carrier's File 960392 MPR).
- (2) As a consequence of the aforesaid violation, the Claimant shall be compensated for all wage loss suffered including overtime and holiday pay.”

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 January 31, 1996, the Carrier's Engineering Supervisor notified the Claimant that if had come to his attention that the Claimant "may be experiencing some health problems based on recent observations of your work performance." The Claimant was withheld from service, effective February 1, 1997, and directed to contact the Carrier's Employee Assistance Hotline. The Claimant was evaluated on February 8, 1996, scheduled for a fitness for duty examination on March 1, 1996, released to return to work on March 8, 1996, and returned to service on March 13, 1996.

The Organization contends that the Carrier improperly disciplined the Claimant by withholding him from service without a fair hearing. It argues that the Carrier had no proper basis for withholding the Claimant from service and that, even if the Carrier had a valid reason to withhold the Claimant from service, it failed to resolve questions concerning the Claimant's medical condition with reasonable dispatch.

It is clear that the Claimant's being withheld from service was not disciplinary in nature. It was based on observations of the Claimant's behavior which led the Carrier to question the Claimant's fitness for duty. The Carrier has the right to withhold an employee from service where it has a reasonable basis for concern with the employee's medical fitness.

During handling on the property, the Carrier explained that the Claimant "exhibited jittery behavior; was jumpy; appearing that he was going to lose control and had a definite lack of concentration." The Carrier's explanation was not denied. Accordingly, we conclude that the Carrier had a reasonable basis for withholding the Claimant from service.

The little more than one month that the Claimant was withheld from service is not per se an excessive period of time. Although the Organization asserts that the Carrier should have resolved the Claimant's status more quickly, the record developed on the property is devoid of evidence of the results of the medical evaluations and of what occurred during the period that the Claimant was withheld from service. The record, however, does reflect that the Carrier twice advised the Organization that it required the Claimant's consent to the release of his medical records. The Claimant did not provide such a release. Thus, the absence of documentation in the record of what transpired medically while the Claimant was withheld from service appears to be the Claimant's responsibility. Under these circumstances, the claim must be denied.

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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 Third Division

Dated at Chicago, Illinois, this 16th day of November 1999.