

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39008
Docket No. SG-39065
08-3-NRAB-00003-050574
(05-3-574)

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

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

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 W. Strong, for all time lost beginning August 9, 2004 until September 2, 2004, when he was returned to work, account Carrier violated the current Signalmen's Agreement, particularly Rules 62 and 65, when it improperly withheld the Claimant from service after he was fully released to return to work from a medical leave of absence and he gave Carrier 48 hours' advance notice as required by Rule 62. Carrier's File No. 1408338. General Chairman's File No. N62483. BRS File Case No. 13251-UP.”

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.

The operative facts leading to the instant claim are undisputed. While not identical, they reflect the same fact pattern that was involved in Third Division Award 39007. The Claimant removed himself from service to deal with mental health issues. He requested a 90-day medical leave of absence beginning June 14 and continuing through September 11, 2004. In the same time frame, the Claimant's Supervisor grew concerned about the Claimant's fitness to work safely and invoked his ability to have his concerns resolved via a fitness for duty medical examination. In connection with its responsibility to determine the Claimant's fitness, the Health Services Department wanted the opinion of the Claimant's treating physician about the Claimant's ability to work safely in the Signal Maintainer environment, which requires working at heights. The Carrier did not receive the information from the treating physician until September 11, 2004. Upon receipt, however, the Health Services Department rendered its approval decision so that the Claimant could resume his full duties on September 12, 2004.

For the same reasons expressed in Award 39007, we do not find the facts of this record to establish a violation of the Agreement. The claim, therefore, 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 27th day of March 2008.