

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40584
Docket No. SG-40547
10-3-NRAB-00003-080311**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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 R. Barragan, for compensation for all time lost from December 8, 2006, until he was returned to work on January 30, 2007, and compensation for his travel allowance from his home to the common lodging work point on January 30, 2007 and at the end of his work period, account Carrier violated the current Signalmen’s Agreement, particularly Rules 36, 62 and 80, when it improperly delayed the Claimant’s return to service after he had been medically cleared to return to work and after providing detailed information to Carrier on December 8, 2006, of his fitness for duty. Carrier compounded this violation by refusing to compensate the Claimant for his travel allowance when he was allowed to return to work on January 30, 2007. Carrier’s File No. 1468177. General Chairman’s File No. UPGCW-36-1420. BRS File Case No. 13927-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 Claimant was assigned to Zone Gang 5722 as a Signalman when he voluntarily removed himself from service due to suffering headaches and nausea as a result of a concussion suffered at work previously. He was on a medical leave of absence (MLOA) and was being treated by his physician, Dr. Gevorkian, who signed a generic return-to-work note for the Claimant on November 17, 2006. Because this note provided no medical information, the Carrier sent the Claimant a letter requesting additional medical information on November 20, 2006. In response Dr. Gevorkian submitted a one page medical note on December 8, 2006 releasing the Claimant to return to work with restrictions from operating heavy machinery and from working in high altitude activities, and listing the various medications he was taking. The Carrier also found that this medical note did not contain the specific medical information necessary for its Health Services Department (HSD) to assess the Claimant's medical condition and whether it was safe to have him return to work or whether it could accommodate the recommended restrictions. It again sent a letter requesting additional medical information. When none was forthcoming, it scheduled the Claimant for a Fitness for Duty (FFD) examination on January 18, 2007 and, after evaluating the medical results of this test, the Claimant was cleared to return to work without restrictions on January 29, 2007. He apparently did not actually commence working with his gang until January 31, 2007, although they began their scheduled work period on January 30, 2007, because he had to travel to get to the work site after receiving notice of his medical clearance. This claim is based upon the Organization's belief that the Carrier unreasonably delayed the Claimant's return to work under Rule 62, and failed to pay his travel allowance under Rule 36.

The Organization argues that the Carrier should have returned the Claimant after receipt of his doctor's note on December 8, 2006, because it responded to the

questions asked and provided the requested medical information, and that the Carrier acted contrary to its own procedures by sending the Claimant for a FFD exam in mid-January. The Organization also asserts that the Claimant should have been provided the information about his return to work in sufficient time to have reached his work location at the beginning of the work cycle on January 30, 2007, thereby entitling him to travel allowance under Rule 36.

The Carrier contends that it has the absolute right to establish medical standards and determine fitness, citing Public Law Board No. 5246, Award 89; Third Division Awards 28299, 25013, and that it acted both reasonably and responsibly by doing so in this case. It notes that the Claimant's doctor released him to return to full duties on November 17, 2006 without providing any medical foundation for such position when he had been off for a period of time due to a concussion, and then returned him subject to two significant restrictions on December 8, 2006, when providing some medical information, but not everything requested. The Carrier asserts that when no additional medical information or clarification was forthcoming, it initiated a FFD exam to ascertain his medical condition prior to returning him to work and, after the HSD analyzed the results of the exam, it determined that the Claimant could be returned to work without limitation. The Carrier argues that it is its prerogative whether to accept the recommendation of an employee's personal physician with respect to restrictions, and that it did not wait an inordinate amount of time to hold the FFD exam or obtain and analyze the results. It insists that there is no Rule 36 violation because the Claimant did not travel to work at the beginning and end of his gang's scheduled work period, citing Public Law Board No. 6549, Award 15.

A careful review of the record convinces the Board that the Carrier acted reasonably and responsibly when it requested additional medical information after receipt of the generic return-to-work note on November 17, when the Claimant had suffered a head injury and concussion and had been off for more than two months, and was within its management right to assure that the Claimant was safe to himself and others before returning to work in the face of a conflicting medical note on December 8, 2006, returning the Claimant to work with two restrictions bearing directly on his work duties and responsibilities, and indicating medications he was taking that could have an effect on the safe performance of his job. The record supports the conclusion that any delay between receipt of the December 8, 2006

doctor's note and the scheduling of a FFD exam on January 18, 2007 was caused, in part, by the time period permitted to the Claimant to supplement his medical information directly from his doctor, which did not occur after December 8, 2006. The Organization has not sustained its burden of proving that the Carrier acted inappropriately or in a dilatory manner in the method it chose to assure the Claimant was medically fit before returning him to work without restrictions, and the time it took to do so. See, Public Law Board No. 6459, Award 9; Public Law Board No. 4716, Award 89; Third Division Awards 33627, 28299, 25013. Neither did it establish a violation of Rule 36 on the facts of this case. Accordingly, the 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 27th day of August 2010.