

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41393
Docket No. SG-41434
12-3-NRAB-00003-100322**

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(BNSF Railway Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the BNSF Railway Company:

Claim on behalf of M. R. Noll, for 80 hours pay at the straight time rate, account Carrier violated the current Signalmen’s agreement, particularly Rules 8, 18, and 54, when it improperly withheld the Claimant from service from April 14, 2009 through April 27, 2009 on a forced medical leave of absence and then failed to allow the Claimant to return to work after he complied with Carrier’s numerous instructions and was cleared to return to work without restrictions. Carrier’s File No. 35 09 0016. General Chairman’s File No. 09-022-BNSF-20-C. BRS File Case No. 14354-BNSF.”

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.

Claimant M. R. Noll is a Signal Maintainer, based in Wataga, Illinois. His job duties require him to walk on a variety of uneven and unstable surfaces, and the position is classified as medium-heavy to heavy in terms of physical demands. On April 14, 2009, the Claimant's Supervisor put him on an involuntary medical leave of absence pending a medical review to determine if he was physically capable of working, after the Claimant told the Supervisor that he was "in a lot of pain" from his hip and the pain "was affecting his work and personal life." He was observed limping and having difficulty getting into and out of his truck. The Claimant may also have informed the Supervisor that day that he was scheduled for hip surgery in the near future; the record is not entirely clear. The Claimant had been having trouble with his hip for some time but had always been able to satisfactorily perform his job.

The Medical Department Manager contacted the Claimant and forwarded a Medical Status Form that he and his physician completed. After reviewing the medical information from the Claimant's doctor, the Medical Department recommended that the Claimant be released for full duty with no medical restrictions, effective April 22, 2009. The Claimant did not return to work until April 27, 2009.

The Organization contends that the Carrier violated Rules 8, 18 and 54 when it improperly withheld him from work without cause. The Carrier has a right to determine the medical qualifications of its employees, but there are limits on its right to withhold employees from service. Its action must have a valid medical basis. There was no such basis here. The Claimant was completing his job duties, he did not complain that his hip pain was preventing him from working, and his doctor had not imposed any medical restrictions on his ability to work. He should not have been removed from work, and the Carrier should compensate him for the time he was held out of service.

The Carrier argues that it has a right to withhold employees from service pending medical evaluation when they appear ill. The Claimant was released to return to work within a reasonable period of time. He is not entitled to compensation under the parties' Agreement. Rule 18 only applies to re-examinations, and this was not a re-examination. Nor did the Carrier violate Rule 54: it applies to discipline, which this was not. Finally, the Claimant did not return to work until April 27, despite the fact that he was released for work effective April 22. He is not entitled to compensation for his own dilatory attitude toward returning to work.

It is well-established that the Carrier may withhold employees from work pending medical determination of their fitness for duty; indeed, some Awards have indicated that the Carrier “. . . has a duty to remove from service employees who are physically unqualified for their jobs.” (Third Division Award 25186) The Organization is correct that the Carrier’s latitude to withhold employees is not unfettered, but that latitude is broad. The Carrier must have a “rational basis” for its determination, or “reason to believe the employee’s continued service may jeopardize his health or safety, or that of his fellow workers.” (Second Division Award 12193)

In this case, the Board concludes that the Carrier did not act inappropriately when it withheld the Claimant from service pending a medical evaluation. He had self-reported to his Supervisor that his pain was affecting his work and that he was scheduled for a hip replacement. He was observed limping and having difficulty getting around. The Supervisor consulted with the Manager of Signals before making the decision to put the Claimant on medical leave. Given the nature of the Claimant’s job as a Signal Maintainer, with its physical demands, the Carrier was justifiably concerned about whether he was in fact physically capable of performing his job. He may have been doing so in the past, but “working through the pain” is not necessarily a good thing; an individual can further injure himself that way.

Even if the Carrier has a rational basis to withhold an employee from duty, the Board has held that when it does so, it bears what Referee Dana Eischen called in Second Division Award 7033 “the risk of fallibility.” The initial decision to withhold is not made by a doctor – that is what “withheld pending medical evaluation” means. The decision is made by a Supervisor or other management official. If the Carrier is wrong in its initial assessment and the employee is medically able to perform his or her job, the employee will have lost pay for time that he or she could have worked but was held off work. The “risk of fallibility” is another way of saying that if a physically qualified employee is held off work pending medical evaluation, it is the Carrier, not the employee, who should bear the financial consequences of its decision to withhold the employee from work.

This case demonstrates the principle. Here, the Claimant had been working; he did not ask to be put on medical leave; he insisted that he was able to work; and he was in fact determined to be medically able to work without any restrictions. There is no reason why he should suffer the loss of pay occasioned by the Carrier’s concerns about his health.

The Claimant was released to return to work effective April 22, 2009. However, he did not return to work until April 27, 2009. The Carrier must compensate him for the time he was held off work, but he is not entitled to be compensated for any time that he voluntarily remained on medical leave following his full release. Accordingly, the Carrier is hereby ordered to make the Claimant whole for any lost compensation between April 14, when he was put on involuntary medical leave, and April 22, 2009, when he was released to return to work, but not for any compensation from April 23 to April 27, 2009, when he did return to work.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of July 2012.