

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41532
Docket No. MW-41750
13-3-NRAB-00003-110033**

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
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(Portland Terminal Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier refused to allow Mr. R. Wilson to return to duty on April 20, 2009 and continued withholding and/or disqualifying him from service until May 22, 2009 (System File C-0918PT-151/BMWE901).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Wilson shall now ‘ . . . be compensated for all hours that he was denied the opportunity to work while he had been removed/disqualified from service beginning April 20th, 2009, through May 22nd, 2009. This equates to \$2,652.00 in wages now being claimed on behalf of Claimant Wilson.’”

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 facts in this case are substantially undisputed. The Claimant established, and currently holds, seniority in the Track sub-department. Prior to the period of time at issue, the Claimant was on an approved medical leave of absence. Upon the Claimant's recovery from a required medical procedure, one of the Claimant's personal physicians sent the Carrier a status update form releasing the Claimant for unrestricted duty as of April 20, 2009. The Carrier's Medical Department responded by notifying the Claimant that because he had been under treatment for two (and not one) identified medical conditions, two separate medical status report forms clearing him for duty would be required before he could return to work. The Claimant timely complied with the Carrier's instructions and obtained the requisite additional medical status report. However, it was subsequently determined that the two status reports conflicted to the extent that one cleared the Claimant for full duty, whereas the other indicated certain medical restrictions. On May 20, 2009, the Carrier's Medical Department received satisfactory clarification from the Claimant's doctors, and on May 22, 2009, the Claimant was cleared to return to work. The Organization claims that the Carrier wrongfully withheld the Claimant from service between April 20 and May 22, 2009, and thus seeks lost wages on his behalf for that period of time.

In the record of this case, the Carrier supplied a detailed timeline establishing the fact that there was ongoing contact between the Claimant and the Carrier's Off-duty Desk Nurse between May 6 and May 21, 2009. During that period of time, it was repeatedly explained to the Claimant that the Carrier had received conflicting documentation from his physicians. Specifically, the Claimant was informed that one physician had cleared him for immediate full duty, whereas another had cleared him with certain temporary restrictions. Thus, the record evidence indicates that there was no apparent disagreement between the Carrier's Medical Department and the Claimant's physicians, but instead, there was a divergence of opinion between the Claimant's physicians as to his true fitness for duty. Accordingly, we find no evidence that the Carrier declined to assist the Claimant in his efforts to return to work, or otherwise unreasonably withheld him from service. We further find that the Carrier was justified in requiring clarification as to the actual state of the Claimant's fitness for service before allowing him to resume unrestricted duty.

It was the Organization's burden to prove that the Carrier violated the Agreement by acting in an arbitrary, capricious, or unreasonable manner in this situation. We do not find support in the record for the Organization's claim that this

was so. Instead, the record evidence shows that any delay between receipt of the April 20, 2009 medical clearance and the Claimant's eventual return to service was caused by a conflict between the Claimant's doctors as to his ability to return to full duty, and not by any unlawful or unreasonable act on the part of the Carrier's Medical Department. In these particular circumstances, we are satisfied that the Carrier acted in good faith to assist the Claimant in his efforts to return to work after an extended medical leave of absence. We further find that the Carrier was within its right to insist upon clarification as to the Claimant's actual fitness for duty before allowing him to return to work. We find no evidence that the Carrier insisted upon anything over and above assurances from members of the Claimant's medical team that, in their professional opinion, the Claimant was fit to return to full duty. The fact that those assurances took some time to acquire was not the Carrier's fault. We thus find the Organization's claim to be without merit.

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 19th day of February 2013.