

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36563
Docket No. MW-34341
03-3-97-3-954**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Burlington Northern Santa Fe Railway (formerly The
(Atchison, Topeka and Santa Fe Railway Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Agreement was violated when the Carrier improperly withheld Mr. L. D. Black from service beginning April 1 through 9, 1996 (System File 180-13-861/05-01-AA ATS).**
- 2. As a consequence of the violation referred to in Part (1) above, the Claimant shall be allowed forty (40) hours' pay at his straight time rate, eight (8) hours' holiday pay and twelve (12) hours' pay at his time and one-half rate.”**

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.

At the relevant time, the Claimant was a B&B Mechanic working on the Orwood Bridge project. The Claimant reported for work on March 31, 1996, but was upset at the fact that he had twice been interviewed for transfer to engine service and, on both occasions, had been denied that transfer. According to the claim, on March 31, 1996, "Claimant . . . was upset . . . [and a]s a result of frustration, after starting work on that date, he felt that he could not keep his mind on his work, was an endangerment to the safety of himself, and others, therefore asked to be released from duty for the remainder of the shift."

On April 1, 1996, the Claimant was advised by Manager Structures B. Busby that "[b]ased on your actions, (of walking off the job sight on the evening of March 31, 1996) you are here by being referred to the Employee Assistance Counselor. . . . You are not to return to service until I have received a favorable recommendation."

The Claimant met with the EAP counselor who referred the Claimant to a therapist. The Claimant was ultimately permitted to return to work on April 9, 1996. This claim followed.

Under the circumstances, the Carrier's action of not permitting the Claimant to return to duty until he was cleared was not discipline, nor an arbitrary exercise of a managerial prerogative. See, e.g., Third Division Award 36056 ("The right of the Carrier to remove an employee from service when there is a reasonable basis for concern about physical and/or mental fitness for duty has been recognized. . . ."); Third Division Award 30253 (it was not arbitrary for the carrier therein to remove an employee from service and require examination by a psychiatrist).

Here, as stated in the claim, "Claimant . . . was upset . . . [and a]s a result of frustration . . . he felt that he . . . was an endangerment to the safety of himself, and others. . . ." The Carrier's decision to not allow the Claimant to return to duty until it was professionally determined that he could do so was not arbitrary.

The fact that the Claimant voluntarily removed himself from service on March 31, 1996 and was granted permission to leave work does not change the result. Given the Claimant's state of mind, his decision to remove himself from work was commendable. However, it was for the Carrier to determine whether the Claimant was fit to return to duty after that date. Under the circumstances, the Organization has not

shown that the Carrier was arbitrary by requiring EAP evaluation with the following therapeutic consultation before permitting the Claimant to return to duty.

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 16th day of June 2003.