

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
-THIRD DIVISION**

**Award No. 37528  
Docket No. SG-37258  
05-3-02-3-145**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien 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 (UP):**

**Claim on behalf of J. K. Chandler for \$15,916.95 in lost wages account Carrier violated the current Signalmen's Agreement, particularly Rules 65, 66 and 68, when it improperly removed the Claimant from service on October 31, 2000, and did not allow him to return to work until January 9, 2001. Carrier's File No. 1257447. General Chairman's File No. N68-138. BRS File Case No. 12111-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.**

In the fall of 2000, the Claimant was working as a Technician in the Centralized Dispatching Center. The Carrier contends that it received complaints from the Claimant's coworkers that he had engaged in altercations, threats and hostile behavior at the Centralized Dispatching Center. As a result of these complaints, the Carrier removed the Claimant from service on October 31, 2000, and required him to undergo a medical examination to determine if he was fit for duty. He was returned to service on January 9, 2001.

On January 12, 2001, the Organization filed a claim on behalf of the Claimant for \$15,916.95 in lost wages between October 31, 2000 and January 9, 2001. It is the Organization's position that the Carrier disciplined the Claimant without affording him a fair and impartial Investigation as required by Rule 68. The Organization also contends that the Carrier's Employee Assistance Counselor released the Claimant to return to work on November 15 and again on December 13, 2000, but the Carrier refused to return him to service until January 9, 2001. According to the Organization, this begs the question whether there was ever a medical problem with the Claimant in the first place.

It is axiomatic in the rail industry that management has the right to withhold an employee from service if it has a legitimate reason to believe that the employee is not fit for duty. Withholding an employee from service under these circumstances does not constitute discipline. Therefore, a carrier is not required to invoke its discipline Rule before withholding an employee from service if there is a reasonable basis to believe that the employee may be unfit for duty.

In this particular case, the Board finds that the Carrier had a legitimate reason to withhold the Claimant from service pending a medical evaluation of his fitness for duty. It received complaints from the Claimant's coworkers that he had engaged in threatening and hostile behavior in the workplace. Because of these complaints, the Carrier acted prudently in withholding the Claimant from service pending an evaluation of his fitness for duty.

The Organization questions whether the Carrier had any reason in the first place to hold the Claimant out of service inasmuch as its own health care providers released him for service twice before he was eventually returned to work. The Carrier offered to release the Claimant's medical evaluation and course of

treatment if he would sign a release, which he never did. Of course, this information is confidential and could not be released without the Claimant's consent. Therefore, he is responsible for the absence of this confidential health care information from the record.

For all the foregoing reasons, the claim is 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 23rd day of June 2005.