

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38251
Docket No. SG-39035
07-3-05-3-450

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman 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 Railroad:

Claim on behalf of G. E. Torgerson, for all time lost, including overtime and holiday pay, from June 15, 2004, until August 12, 2004, account Carrier violated the current Signalmen's Agreement, particularly Rules 5, 65, 66, 70 and 80, when it improperly disqualified the Claimant from service pending medical evaluation after he was medically cleared to return to work and then failed to allow the Claimant to prove his fitness for duty at an unjust treatment [hearing]. Carrier's File No. 1405497. General Chairman's File No. UPGCW-65-1028. BRS File Case No. 13174-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.

On or about April 26, 2004, the Claimant suffered an on-duty injury. The exact nature of the injury is not apparent from the record before the Board, nor is it particularly relevant to the instant case. Furthermore, the chronology of the incidents precipitating this claim is almost indiscernible, despite a careful review of the documentation on the record and the correspondence between the parties. It appears that because of his injury, the Claimant was out of work beginning April 27, 2004. The Claimant's personal physician released him to return to work and he did so on June 29, 2004.

In the meantime, however, in late May 2004, the Claimant's coworkers informed the Claimant's supervisor that they had observed the Claimant engaging in some problematic behavior (the nature of which is not discussed on the record) both prior to and after the time the Claimant sustained his injury in April. Based upon his fellow workers' concerns, the Claimant's supervisor contacted the Carrier's Health Services Department and requested that he be subjected to a fitness for duty (FFD) process, prior to actually returning to work, despite his June 29, 2004 physical release to return to work.

On or about July 1, 2004, the Health Services Department scheduled an FFD examination based upon the Claimant's reported behavior. The examination was held on July 15 and the Health Services Department received the results on July 19, 2004. On or about July 24, 2004 the Health Services Department notified the Claimant verbally and in writing what additional treatment and what additional paperwork from the Claimant's personal physician it would require before allowing the Claimant to return to work. He was subsequently released for service without restrictions on August 6 and actually returned to service on August 12, 2004.

The Organization contends, in essence, that the Carrier's actions were arbitrary; it seeks backpay for the Claimant dating from June 15, 2004 until his actual return to work. However, the Organization provided the Board with no information, other than allegations, to support a finding in its favor. There is

nothing in the record to suggest that the Carrier acted from anything other than a legitimate concern for the safety of the Claimant and his coworkers. There is no indication that his FFD was unreasonably delayed, nor that, once he had complied with the Health Services Department's conditions for his ultimate return to work, that his return was in any way impeded by the Carrier.

Therefore, the Board has no basis for sustaining the claim as presented.

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 18th day of July 2007.