

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39386
Docket No. SG-39339
08-3-NRAB-00003-060215
(06-3-215)

The Third Division consisted of the regular members and in addition Referee Joan Parker 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 Burlington Northern Santa Fe (BNSF):

Claim on behalf of J. L. Lucas, for payment for all time lost, including overtime and scheduled on-call days, skill pay, as well as credit for all days lost for seniority and employment benefits, from January 21, 2005 and continuing until the Claimant is returned to duty, account Carrier violated the Current Signalmen’s agreement, particularly Rules 8, 18, 19 and 54, when it improperly withheld the Claimant from service on a forced medical leave of absence and then failed to allow the Claimant to return to work after he repeatedly complied with Carrier’s numerous instructions and was cleared to return to work at every step. Carrier’s File No. 35 05 0041. General Chairman’s File No. 05-012-BNSF-156-CA. BRS File Case No. 13444-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.

At the time pertinent to the instant matter, the Claimant was as a Signal Maintainer, headquartered at Needles, California. On January 17, 2005, motorist observed the Claimant driving a Carrier truck erratically for approximately ten miles, knocking down two road posts and sideswiping a bridge. The motorist reported what he had observed to the Carrier. The Carrier located the two posts and noted damage to the truck that supported the motorist's version of events. The Carrier subsequently had the Claimant take a drug test, which the Claimant passed. However, the Claimant stated at that time that he used two medications the drug test did not screen for, including Xanax, which is known to affect memory, judgment, and motor performance. Consequently, the Carrier withheld the Claimant from service and instructed him to turn in his Carrier-issued Department of Transportation (DOT) Commercial Driver's License (CDL) on January 21, 2005.

The Carrier proceeded to investigate the Claimant's medical history to determine whether he could safely perform his duties as a Signal Maintainer. Learning that the Claimant had been treated by a Dr. Anderson in September 2004 for a back injury, and had been prescribed two additional medications, the Carrier asked Anderson to provide a statement regarding the Claimant's ability to perform his job and hold a Department of Transportation CDL. Anderson stated in writing on January 25, 2005 that the Claimant's prescribed medications would not prevent him from performing his job. Nevertheless, concerned that the Claimant was taking four different medications, the Carrier did not yet return the Claimant to service. When the Carrier attempted to get more information from the Claimant, the Claimant could not identify who had prescribed which medications to him. The Carrier's Medical and Environmental Health Department therefore referred the

Claimant to EAP, and on February 1, 2005, the Claimant was sent to a psychologist, Dr. Bowlin, for evaluation.

Dr. Bowlin reported that he had difficulty obtaining definitive information from the Claimant about what medications he took and in what amounts, and recommended that the Claimant undergo a more specialized evaluation for substance abuse. Bowlin had called one of the providers the Claimant had named, and while the provider denied prescribing the medications the Claimant had ascribed to that provider, the provider stated that two other medications were being prescribed. In addition, the Claimant admitted that two of his doctors were prescribing the same opioid medication.

The Claimant was sent to Montevista Hospital in Las Vegas and evaluated for admission on February 21, 2005. However, the Claimant denied having a substance abuse problem, a prerequisite for hospital admission. Like the Carrier and Dr. Bowlin, the hospital reported difficulty in obtaining clear information from the Claimant. In the meantime, an EAP interview with the Claimant revealed that the Claimant had been seeing five different doctors, as well as a nurse practitioner, not only for his 2004 back injury, but for Hepatitis C. The Carrier required the Claimant to get releases from three of the doctors, who released the Claimant with no restrictions in March. Still not sure of the true status of the Claimant's substance use, however, the Carrier sent the Claimant to Loma Linda University Behavioral Medicine Center for a more thorough evaluation than he had received at Montevista Hospital. Loma Linda University evaluated the Claimant on May 3, 2005, and diagnosed him for polysubstance abuse and alcohol dependence. It was ultimately determined that the Claimant was being prescribed Valium, Flexeril, Hydrocodone, Darvocet, Xanax and Restoril.

EAP informed the Claimant by letter dated June 6, 2005 that he was being returned to work on a restricted basis, and would not be permitted to drive Carrier trucks or hold a DOT CDL. The EAP informed the Claimant, however, that his situation would be reevaluated if he (1) tested negative for alcohol and drugs, and (2) either completed twelve hours of alcohol and drug abuse education, or attended two twelve-step meetings per week for two months. Initially, the Claimant resisted

meeting these conditions. However, in January 2006, the Claimant contacted EAP, and ultimately met the two conditions required for his restrictions to be lifted.

The Organization asserts that the Carrier violated the parties' Agreement by withholding the Claimant from service on a forced medical leave of absence, and then failed to return the Claimant to work despite his compliance with every Carrier instruction and clearance "to return to work after every medical evaluation." According to the Organization, the Claimant was released for duty without restrictions by his own doctors and others chosen by the Carrier, but the Carrier continued to withhold the Claimant from service. The Organization argues, "The Carrier has done everything possible in a systemic effort to prevent the Claimant from returning to work under the guise of medical concerns." The Carrier's actions constituted an abuse of discretion, the Organization avers.

It is undisputed that the Claimant was indeed driving erratically on January 17, 2005. Moreover, it is undisputed that the Claimant volunteered the information that the drug screen subsequently performed would not reveal two medications he was being prescribed, one of which was Xanax. On the basis of these two facts, the Board finds that it was proper for the Carrier to withhold the Claimant from service until it was satisfied that he could perform his duties as Signal Maintainer safely both for his sake and that of the public. Unfortunately, it proved to be more difficult than the Carrier expected to reach that point of satisfaction. Every entity to which the Carrier sent the Claimant for evaluation experienced identical obstacles in trying to get clear information from the Claimant regarding his prescriptions. Ultimately, however, it was finally determined that the Claimant was seeing six different providers and was being prescribed six different medications all of which were of a type which raised serious concerns regarding the Claimant's ability to perform his job, as well as a legitimate suspicion that the Claimant had a substance abuse problem. In fact, the Claimant was finally diagnosed for polysubstance abuse and alcohol dependency.

On that basis, the Carrier returned the Claimant to work as of June 6, 2005, but with restrictions prohibiting him from driving or holding a DOT CDL until he received treatment for his substance abuse. The Board finds that all of these Carrier actions were reasonable in light of the information that had been turned up

by the investigation into the January 17, 2005 incident and, contrary to the Organization's argument, was not an abuse of discretion. Rather, the Carrier's actions were a proper fulfillment of its crucial obligation to ensure safety. Moreover, the treatment conditions required of the Claimant in order to be returned to his Signal Maintainer position without restrictions were not onerous. Nevertheless, the Claimant refused to meet these conditions until January 2006.

Inasmuch as there is no evidence that the Carrier was dilatory or abusive of discretion in performing its functions with regard to ensuring safety in the Claimant's case, the Board finds that the claim 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 8th day of December 2008.