

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42187
Docket No. MW-41797
15-3-NRAB-00003-120008**

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it improperly withheld Mr. J. Flagg from returning to service beginning on June 23, 2010 and continuing (System File J-1050U-252/1540206).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Flagg shall now “*** be allowed compensation for all hours he was not allowed to work from June 23, 2010, and continuing. This Claim also includes any overtime hours that Mr. Flagg would have been allowed to work from June 23, 2010 and continuing until he is returned to work. Also, Mr. Flagg must be allowed for expense in the form of lodging, travel and meals that he incurred in connection with his removal from service and the medical information as required by the Carrier.”**

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 of the events giving rise to this claim, the Claimant was working as a Bus Driver for the Carrier. The Claimant has a lifelong history of asthma, for which he takes medication. He also carries a rescue inhaler at all times. On the morning of June 8, 2010, the Claimant was working in an area where crop dusting was taking place. At some point, Track Supervisor R. Ruiz noticed that the Claimant had become lethargic and slow in his movements. He appeared to be having difficulty breathing and required frequent breaks. The Claimant used his inhaler several times. His skin tone was observed to be "pale and pasty," and he was visibly shaking. Track Supervisor Ruiz decided to remove the Claimant from service immediately and withhold him from further service pending medical clearance. The Claimant drove himself home from the workplace. Later that evening, he drove himself to the hospital, where he was diagnosed as having experienced an exacerbation of his underlying asthmatic condition. He was released to "self-care" a short time later. On June 10, 2010, the Claimant saw his regular doctor, who examined him and supplied him with a release for a full return to work on June 23, 2010, without any restrictions.

By letter dated June 14, 2010, the Carrier formally notified the Claimant that he was being withheld from service until a medical evaluation could be completed. The evaluation was not scheduled until June 25, 2010, after which the Claimant was authorized to return to work without restrictions on June 30, 2010.

The Organization filed this claim, alleging that the Claimant's removal from work was unreasonable and that he was unreasonably withheld from work between June 23 (when his doctor released him to return to work) and June 30, 2010, when the Carrier's Medical Department authorized his return. It seeks backpay plus expenses associated with the Claimant's travel to his appointment with the Carrier's Medical Department. The Carrier was aware of the Claimant's medical condition and the fact that he managed it well at all times. Conversely, the Carrier contends that, given his physical symptoms and distress on June 8, 2010, the Claimant was properly removed from work that day. Moreover, the medical review process was properly initiated and fairly applied. The Carrier is entitled to use its own medical personnel to determine an employee's fitness for duty; it need not defer to a personal private physician's opinion.

The record evidence establishes that the Claimant experienced significant physical distress on the morning of June 8, 2010, after having been exposed to pesticides used in crop dusting. The Organization contends that the Claimant's removal from work was not done by a medical professional and was unreasonable or arbitrary. While the Track Supervisor was not medically trained, he was certainly able to interpret the Claimant's physical symptoms as indicative of considerable distress; he ordered the Claimant to see the Carrier's health nurse for a more professional evaluation. Given that the Claimant visited the hospital for treatment the same night as the incident and that his own doctor did not release him to return to work without restrictions until June 23, 2010 – a good two weeks after the exposure – it is clear that the June 8 incident raised legitimate questions about the Claimant's health. Consequently, the Board concludes that the Carrier acted reasonably in removing the Claimant from the workplace on June 8, 2010, and scheduling him for a medical evaluation. Moreover, there is no evidence that the evaluation was not properly conducted. The essence of the Organization's complaint is that the evaluation was not scheduled quickly enough and that the Claimant could have been returned to work at least a week before he was.

An employer has the right to conduct a medical evaluation, or fitness-for-duty examination, of its employees when it has a reasonable belief that there may be a problem with the employee's physical or mental ability to work as assigned. Such an evaluation may involve, as it did here, more than a simple physical examination: the Claimant was given an EKG (electrocardiogram) and pulmonary function test. These things can take time, both in scheduling and in interpreting the results once the various components of the evaluation have been completed. The incident occurred on June 8, 2010. The examination and various tests were completed by June 25, 2010 – only two and one-half weeks later. The examining doctor faxed his medical report regarding the June 25 examination to the Carrier on June 28, 2010. On June 29, 2010, the Carrier's physician examined all of the medical notes and cleared the Claimant to return to work the next day, June 30, 2010.

As frustrating as it may be for the employee who is eager to return to work as soon as possible after a medical incident, the Carrier has the right to reasonably determine when any evaluation will take place. The timeline of events in this case establishes that while it might have been possible to schedule the Claimant's medical examination for the Carrier a little sooner, the evaluation process overall was not unduly delayed or protracted. The Carrier has an obligation to ensure that an employee can return to work safely and in good health, both for his or her own sake and for the safety of co-workers. It did so here, and there is insufficient evidence for

the Board to conclude that the Claimant's medical evaluation was improper, or that the Carrier acted unreasonable, arbitrarily or otherwise in bad faith in removing him from, or returning him to, work.

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 28th day of October 2015.