

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42376
Docket No. MW-42575
16-3-NRAB-00003-140237**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(BNSF Railway Company (former Burlington
(Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to promptly return Claimant M. Flores to service after being released by his personal physician on November 19, 2010, following a medical leave of absence (System File C-11-P018-6/10-11-0195 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Flores shall ‘. . . be paid for all straight time, overtime, Holiday pay, and credited the vacation qualifying days that he was not allowed to work during the claim period beginning December 1, 2010, and continuing, until the Carrier returns the Claimant to work.’”**

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.

The Claimant was on a medical leave of absence from May 9, 2008 through January 13, 2011. On November 19, 2010, the Claimant's personal physical released him to return to work without restrictions. BNSF advised the Claimant that he would have to supply all pertinent medical treatment records to the Company. Records were not received until December 2, 2010. On December 13, MEH Field Manager Dan Best advised the Claimant that missing medical records would be required before the fitness for duty review could be completed. BNSF received the missing records on December 17, 2010. Best then advised the Claimant that he would arrange an on-site work evaluation. The Claimant took the Department of Transportation examination on January 7, 2011 and it was approved on January 11, 2011. On Thursday, January 13, the Claimant underwent the on-site work evaluation. He was issued a Fitness for Duty Recommendation and cleared to work. He returned to work the following Monday, January 17, 2011.

The Carrier asserts the Claimant did not keep the Company updated on his three years of treatment, therefore when he was released, voluminous records needed to be supplemented before review. The Claimant gave his attorney a wrong email address causing some of the delay. Prior to returning to service, an on-site work evaluation was required to determine whether the Claimant could safely perform his duties without undue risk. He also needed to complete rules testing, drug and alcohol testing, work-related education and a Department of Transportation medical examination/certification. It is well established in prior awards that the Carrier has the right and responsibility to ensure that all its employees are fit for duty. Two months is not unreasonable when the delay was not solely due to BNSF. There was no unreasonable delay. He was returned as soon as he completed the testing.

The Organization argues the length of time Claimant was withheld from service was unreasonable and improper. He was medically evaluated and medical confirmation of his ability to return to work was received by the Carrier as of November 22, 2010. By December 17 he had provided all requested medical records to the Carrier. At the very least, he should have been returned to service at that time. The Carrier has abused its discretion by withholding him from service far beyond his medical incapacity.

The delay in this case was longer than it should have been, but the Claimant himself shared in the blame. He did not keep the Company's records supplemented

during the period of his absence. His first attempt at supplementation was incomplete. Delivery was hampered by his use of the wrong email address. The Carrier did not have a complete medical file on the Claimant until December 17, immediately prior to the holidays. At that point, he still needed to complete a series of tests and obtain DOT certification. The Carrier was well within its rights to insist that necessary tests and certifications be completed before actually putting the Claimant back on the job. There is no evidence in the record as to why this testing was not complete until January 7. It follows that the Organization has not met its burden of proving that the fault lay with the Carrier. The Board cannot find adequate evidence that the delay was caused by arbitrary, capricious or improper conduct on the part of the Carrier.

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 30th day of August 2016.