

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42382  
Docket No. MW-42826  
16-3-NRAB-00003-150008**

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

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees Division -  
( IBT Rail Conference  
( 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 C. Mitchell to service following his being released by his personal physician on June 28, 2013 following a medical leave of absence (System File C-13-P018-39/10-13-0609 BNR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Mitchell shall ‘. . . be paid for all of his lost time, both straight time and overtime. Additionally, I request that Mr. Mitchell be credited for vacation qualifying time and all other benefits for this time frame. \*\*\*”

**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 June 28, 2012, the Claimant's physician released him from treatment. This release was received by BNSF's medical department on July 9, 2013. Records needed for a fitness for duty review were not in the file. Partial records were received on July 22 and additional records were received on July 30. BNSF Dr. Laura Gillis requested additional necessary medical records and these were received on August 1 and 2.

Upon reviewing the Claimant's medical information, traces of ETOH were noted in the Claimant's serum blood alcohol testing. As a result, additional fitness for duty clearance was required through BNSF's Employee Assistance Program. The Claimant complied with these instructions and was cleared to return to work on August 22, 2013.

It is the position of the Carrier that it has the right and responsibility to confirm that employees who return to work from leave are fit for duty. It is not the employee's physician who makes this decision. The Organization has provided no evidence of any contractual violation.

The Organization avers the length of time the Claimant was withheld from service was improper. Rule 15 provides that matters of importance to the employee will be handled expeditiously. Rule 40 establishes that employees will only be held out of service in the event of serious rule violations. The Claimant has committed no serious rule violations nor has he been charged with any. He was granted a full medical release by his treating physician. He was not required to undergo any testing or medical treatment after his doctor's release.

Generally speaking, it is reasonable for an employee to be brought back to work within five days of medical release. In this case, the Claimant was withheld from service eight days longer. There is no medical evidence of record that would support a finding that the Claimant needed to be withheld from service for this period of time. All needed medical records were in the hands of the Carrier as of August 2. The record does not support delay of almost three weeks beyond that.

The claim is granted in part. The Claimant will be restored eight days pay and seniority due to being held from service an excessive period of time.

**AWARD**

Claim sustained in accordance with the Findings.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

**Dated at Chicago, Illinois, this 30th day of August 2016.**